



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

November 14, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your Supplemental Nutrition Assistance Program Administrative Disqualification Hearing held October 18, 2012. The purpose of this hearing was to determine whether or not you intentionally committed an Intentional Program Violation.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Supplemental Nutrition Assistance Program (SNAP) is based on current policy and regulations. These regulations provide that an Intentional Program Violation consists of having intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts; or committed any act that constitutes a violation of the Food Stamp Act, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. Individuals found to have committed an act of Intentional Program Violation will be ineligible for a specified time determined by the number of previous Intentional Program Violation disqualifications (West Virginia Income Maintenance Manual § 20.2 and Code of Federal Regulations-7 CFR § 273.16).

The information which was submitted at your hearing revealed that you intentionally withheld information concerning your daughter's SSDI income in order to receive SNAP benefits for which you were not entitled.

It is the decision of the State Hearing Officer that you committed an Intentional Program Violation and a disqualification penalty of one (1) year will be applied. This disqualification will begin effective January 1, 2013.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Lori Woodward, Repayment Investigator

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BOARD OF REVIEW**

**IN RE:** -----,

**Defendant,**

**v.**

**ACTION NO.: 12-BOR-1978**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Movant.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing for ----- convened on October 18, 2012. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual.

**II. PROGRAM PURPOSE:**

The purpose of the Supplemental Nutrition Assistance Program (SNAP) is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

**III. PARTICIPANTS:**

Lori Woodward, Repayment Investigator

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Defendant committed an Intentional Program Violation and should be disqualified for one year from participation in the Supplemental Nutrition Assistance Program or SNAP.

**V. APPLICABLE POLICY:**

Code of Federal Regulations, 7 CFR § 273.16  
Common Chapters Manual, Chapter 700  
West Virginia Income Maintenance Manual, Chapter 20.2; Chapter 9.1.A.2.h

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Combined Application and Review Form with associated Rights and Responsibilities dated June 15, 2010
- D-2 Combined Application and Review Form with associated Rights and Responsibilities dated December 3, 2010
- D-3 Combined Application and Review Form with associated Rights and Responsibilities dated June 28, 2011
- D-4 Social Security Administration Payment History March 2010 to October 2011
- D-5 Food Stamp Claim Determination
- D-6 Cash Assistance Claim Determination
- D-7 Notification of Intent to Disqualify dated August 3, 2012
- D-8 Waiver of Administrative Disqualification Hearing dated August 10, 2012
- D-9 West Virginia Income Maintenance Manual Chapter 1.2, 2.2, and 9.1
- D-10 West Virginia Income Maintenance Manual Chapter 20.2, and Common Chapters 740.11

**VII. FINDINGS OF FACT:**

- 1) On August 23, 2012, a request for an Administrative Disqualification Hearing was received by the Board of Review from the Department's Repayment Investigator, Lori Woodward (Investigator Woodward). Investigator Woodward contends that the Defendant committed an Intentional Program Violation (IPV) and recommends that he be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a twelve (12) month period.
- 2) A Notice of Scheduled Hearing was issued to the Defendant on August 27, 2012, via certified restricted mail delivery, to his address of -----, ----, West Virginia, ----. A return receipt documents that the Defendant received notice of the hearing on September 4, 2012. A request for continuance from the Department was granted by the Hearing Officer which rescheduled the hearing for October 18, 2012, at 10:15 A.M., with notices issued to the Defendant on September 4, 2012.
- 3) The hearing convened as scheduled at 10:15 A.M., on the requested date, and as of 10:30 A.M., the Defendant failed to appear. As set forth in the Code of Federal Regulations found at § 7 CFR 273.16 (e) (4) and State policy (West Virginia Department of Health and Human

Resources Common Chapters Manual Chapter 740.20), the hearing was conducted without the Defendant in attendance.

- 4) On October 24, 2012, the Defendant submitted a written request for good cause to the Hearing Officer. Upon review of the request, the Defendant did not present good cause and a decision was based on evidence and testimony presented by the Department.
- 5) The Department contends that the Defendant intentionally violated SNAP regulations by withholding information concerning his receipt of Social Security Disability Insurance (SSDI) benefits on behalf of his daughter (Exhibit D-7) at recertification interviews for SNAP benefits.
- 6) Investigator Woodward testified that the Defendant completed recertifications for SNAP benefits on June 15, 2010 (Exhibit D-1), December 3, 2010 (Exhibit D-2), and June 28, 2011 (Exhibit D-3). During each recertification interview, the Defendant reported that his household consisted of himself and his daughter, with WV WORKS cash assistance as the only income available to the household.
- 7) Investigator Woodward testified that the Department became aware that the Defendant had been receiving SSDI benefits on behalf of his daughter since March 2010, and failed to report this income at each recertification. Investigator Woodward provided evidence (Exhibit D-4) from the Social Security Administration (SSA) which documents that the Defendant received SSDI benefits on behalf of his daughter from March 2010, until October 2011, when she attained 18 years of age and became her own payee.
- 8) Investigator Woodward provided a Food Stamp Claim Determination (Exhibit D-5) to demonstrate that by withholding information concerning his daughter's SSDI benefits, an overpayment of SNAP benefits was issued to the Defendant in the amount of \$1375.00 for the months of July 2010, through December 2011.
- 9) The Defendant signed and completed the Rights and Responsibilities (Exhibit D-1, D-2, D-3) portion of the recertification application and specifically acknowledged the following statements:

I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not receive SNAP benefits as follows: First Offense-One Year, Second Offense-two years; Third Offense-permanently. In addition, I will have to repay any benefits received for which I was not eligible.

I certify that all statements on this form have been read by me or read to me and that I understand them. I certify that all information I have given is true and correct and I accept these responsibilities.

By signing the document, the Defendant acknowledged that all information provided during the recertification was true and correct and he accepted the corresponding responsibilities.

10) West Virginia Income Maintenance Manual Chapter 1.2 indicates:

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.

11) West Virginia Income Maintenance Manual, Chapter 9.1 indicates:

Persons who have been found guilty of an IPV are disqualified as follows:

- 1<sup>st</sup> Offense: 1 Year
- 2<sup>nd</sup> Offense: 2 Years
- 3<sup>rd</sup> Offense: Permanent

12) Common Chapters Manual 740.11.D states as follows:

Intentional Program Violation - For the purpose of determining through an Administrative Disqualification Hearing whether or not a person has committed an Intentional Program Violation, the following criteria will be used. Intentional Program Violation shall consist of having intentionally:

1. Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
2. Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system access device.

13) Common Chapters Manual 740.22 states as follows:

Decision – The Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence that demonstrates that the defendant committed, and intended to commit, Intentional Program Violation as defined in Section 740.11 of this Chapter. The Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing. In rendering a decision, the Hearing Officer shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and court orders. The decision shall include reference to all pertinent law or policy. If the Hearing Officer rules that the defendant

committed an Intentional Program Violation, he or she will include the length and the beginning date of the disqualification penalty.

**VIII. CONCLUSIONS OF LAW:**

- 1) The policy and regulations that govern SNAP benefits specify that a program violation has occurred when an individual intentionally makes a false or misleading statement, or misrepresented, concealed or withheld facts relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an IPV.
- 3) Evidence is clear that the Defendant withheld income information concerning his daughter's SSDI income during SNAP recertification interviews on June 15, 2010, December 3, 2010 and June 28, 2011. Evidence reveals that the Defendant began receiving SSDI benefits on behalf of his daughter beginning March 10, 2010, and failed to report such income at his initial SNAP recertification on June 15, 2010. The Defendant's failure to report the receipt of this income at subsequent SNAP recertifications further establishes his intent to mislead the Department.
- 4) In accordance with SNAP policy and regulations, an IPV has been committed and a disqualification penalty must be applied. The disqualification penalty for a first offense is one (1) year.
- 5) The Defendant is the only assistance group member subject to said disqualification penalty. The one year disqualification penalty will begin January 1, 2013.

**IX. DECISION:**

Intentionally making a false or misleading statement or misrepresenting facts to secure SNAP benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Department's proposal to apply a twelve (12) month disqualification penalty is upheld.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of November 2012.**

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**Eric L. Phillips**  
**State Hearing Officer**