



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 E. Third Avenue  
Williamson, WV 25661

Earl Ray Tomblin  
Governor

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

May 1, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification Hearing held on March 7, 2012, for the purpose of determining whether your client ----- committed an Intentional Program Violation (IPV).

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and 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.

An Intentional Program Violation consists of intentionally having 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. [WV Income Maintenance Manual Section 20.2,C,2 and 7 CFR Section 273.16 (c)]

Information submitted at the hearing did not establish by clear and convincing evidence that the defendant intentionally provided false and misleading information about his residence in order to receive SNAP benefits for which he was not entitled.

It is the decision of the State Hearing Officer that the Department did not prove your client committed an Intentional Program Violation, and no disqualification penalty will be applied to his SNAP benefits.

Sincerely,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Cassandra Burns, Repayment Investigator

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

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

**Defendant,**

**v.**

**ACTION NO.: 11-BOR-2027**

**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 concluded on May 1, 2012 for ----- . 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. This Fair Hearing was convened on March 7, 2012, at the Lincoln County office of the WV DHHR in Hamlin, WV.

**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:**

Benita Whitman, Esq., Legal Aid of WV, Defendant's Representative  
-----, Defendant  
-----, Defendant's Wife (separated) and Witness  
-----, Defendant's Mother-in-Law and Witness

Cassandra Burns, Repayment Investigator, Department's Representative.

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

The Hearing Officer placed under oath all participants offering testimony in the hearing.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in SNAP.

**V. APPLICABLE POLICY:**

7 CFR §273.16 Code of Federal Regulations  
Common Chapters Manual, Chapter 700  
West Virginia Income Maintenance Manual: Chapter 1.2.E, Chapter 20.2 and 20.6

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

**Movant's Exhibits:**

- M-1 Copy of the Code of Federal Regulations (CFR) §273.16 showing disqualifications for Intentional Program Violations.
- M-2 BVRF Screen print from RAPIDS System showing referral for recoupment.
- M-3 ES-FS-5, Food Stamp (SNAP) Claim Determination.
- M-4 Employment data for Defendant's wife, dated June 20, 2011.
- M-5 Internet WV SNAP application form, dated February 1, 2011.
- M-6 Case recordings from Defendant's SNAP case record, February 17 to March 11, 2011.
- M-7 Screen print from Defendant's SNAP case record dated July 26, 2011, indicating his description of directions to his home, with attached photograph of mobile home purported to be his residence at that time.
- M-8 Address Verification Request from Repayment Investigator to Postmaster of [REDACTED] WV, Post Office, dated July 27, 2011 and returned by Postmaster on August 1, 2011.
- M-9 School attendance verification from [REDACTED] Middle School, [REDACTED] WV.
- M-10 Transaction history from Defendant's Electronic Benefits Transfer (EBT) account from May 8, 2011 to September 9, 2011.
- M-11 Copy of Income Maintenance Manual Chapter 1.2.E showing customer responsibility for providing accurate information.
- M-12 Copy of Income Maintenance Manual Chapter 20.2 showing SNAP benefit claims and repayment procedures.
- M-13 Copy of Income Maintenance Manual Chapter 20.6.A showing definitions of Welfare Fraud.
- M-14 Copy of IFM-BR-44 Waiver of Administrative Disqualification Hearing form, signed by Defendant on September 23, 2011, indicating he chose his right to an administrative hearing.

- M-15 Print-out from the WV Department of Motor Vehicles listing vehicle registration and owners' address information for Defendant and spouse.
- M-16 Transaction history from Defendant's Electronic Benefits Transfer (EBT) account from February 2, 2011 to June 8, 2011.
- M-17 Letter requesting verification of household address, dated September 15, 2011.

**Defendant's Exhibits:**

- D-1 Statement from landlord and rent receipts for Defendant for the months of December 2010, January 2011 and February 2011.
- D-2 Case recordings from Defendant's SNAP case record, from June 9 to June 18, 2011.
- D-3 US Code Title 7, Chapter 51, §2016, *Issuance and Use of Program Benefits*.
- D-4 Social Security Administration Form SSA-623-OCR-SM, Child's Representative Payee Report.
- D-5 IRS Form 1040 for Defendant's spouse for tax year 2010.
- D-6 Rent receipts for Defendant for the months of March 2011 through October 2011.
- D-7 Faxed verification from Postmaster of [REDACTED] WV Post office to Legal Aid of WV, dated March 6, 2012.

**VII. FINDINGS OF FACT:**

- 1) The Department is alleging an act of Intentional Program Violation, or IPV, in the Defendant's SNAP case because he allegedly reported that he was separated from his wife and lived alone in [REDACTED] County, WV, while he was living with his spouse in [REDACTED] County, WV.
- 2) On April 27, 2011, the Investigations and Fraud Management unit of the WV DHHR received a referral (Exhibit M-2) indicating that Defendant, a SNAP recipient, lived with his wife in [REDACTED] County WV, and not at the [REDACTED] County WV location reported on his SNAP benefit record. The referral stated that Defendant's wife was working, and her income was not counted against his SNAP benefits. Based on this information, the Investigations and Fraud Management (IFM) investigator who investigated the referral calculated that Defendant received SNAP benefits to which he was not entitled from March 2011 through October 2011, in the amount of \$466. (Exhibit M-3.)
- 3) Department's Representative, the IFM investigator who investigated the referral, reported that she determined Defendant's wife was working and obtained employment verification information. (Exhibit M-4.) Department's representative submitted into evidence an internet SNAP application/review form completed by Defendant's representative payee on February 1, 2011. This form indicates that two individuals were included in the SNAP assistance group (AG), Defendant and his son. This form indicates Defendant paid rent in the amount of \$325 per month, utilities included, for a residence in [REDACTED] County, WV. The review form describes the location of Claimant's rented home as follows: "From [REDACTED] through [REDACTED] intersection toward [REDACTED] first left across railroad tracks, behind Y." Department's representative submitted into evidence a printout of case recordings from Department's SNAP case record indicating that a [REDACTED] County

Economic Services Worker called Defendant to complete the benefits review. The worker recorded that based on information gathered during the phone call, he or she determined Defendant's son did not live with him at least half of the time; therefore, Defendant's son was removed from Defendant's SNAP AG. Department's Representative submitted into evidence an Address Information Request from IFM to the Postmaster of the US Post Office at which Defendant's wife receives her mail. (Exhibit M-8.) According to the form, the Postmaster date-stamped it on August 1, 2011 and verified that Defendant received mail at a mailing address in ██████████ County, WV. Department's Representative submitted into evidence a print-out from Defendant's Electronic Benefits Transfer (EBT) account, which records the locations at which a SNAP recipient makes purchases using his or her EBT card. (Exhibit M-16.) She pointed out that all of the locations at which Defendant used his EBT card were in ██████████ County, WV, and none of them were in ██████████ County.

- 4) Defendant's Representative pointed out that the referral form which prompted this investigation (Exhibit M-2) lists the worker who sent the referral as well as the IFM worker who received it. She argued that on the referral, the IFM worker was listed both as the person who sent and the person who received the referral. Department's Representative stated that she received information from several workers who had questions about Defendant's living arrangements so she sent the referral to herself. She added that this was part of her office's standard procedure when a referral came from several sources.
- 5) Defendant's wife testified that Defendant cannot read or write, so despite the fact that he and she were separated throughout the repayment period, she became his representative payee when he began receiving Supplemental Security Income (SSI) benefits from the Social Security Administration in 2009, and was Defendant's representative payee throughout the repayment period of March through October 2011. She stated that she was also Defendant's protective payee for his benefits received from the WV DHHR. She stated that as his representative/protective payee, she directed the Social Security Administration, the WV DHHR and other agencies with which Defendant had contact to send his correspondence to her home address. She added that this was the reason that the Postmaster of her local post office reported Defendant received mail there.
- 6) Defendant's wife testified that their son has been diagnosed with Asperger's Syndrome, a mental condition similar to autism. She stated that her son is twelve years old, but because he has Asperger's, he becomes highly agitated if his father is not with him at home when he comes home from school. She stated that because of this, Defendant travelled from his home in ██████████ County, WV, about ½ hour to his wife's home to be with his son after school and on weekends, holidays and sick days.
- 7) Defendant testified that he received SSI monthly, and that he cannot read or write. He verified that he had to be home with his son after school, or his son would become upset. He stated that while he was travelling from his home to his wife's residence, he did his grocery shopping because the prices at the grocery stores in ██████████ County were lower

than those nearer his home. Defendant's Representative argued that there are no state or federal policy restrictions as to where a SNAP recipient may spend his or her benefits.

- 8) Defendant's Representative submitted into evidence rent receipts from each month of the repayment period, March 2011 through October 2011, indicating Defendant paid rent in the amount of \$325 for each of those months to -----. (Exhibit D-6.) She also submitted a letter she sent to the Postmaster of the [REDACTED] WV, Post Office, inquiring whether Defendant held a post office box there. (Exhibit D-7.) The Postmaster date-stamped the letter and returned it to Defendant's Representative, indicating on it that Defendant rented a post office box there from June 2009 through December 2011.
- 9) Department's Representative pointed out that the landlord who signed these receipts was Defendant's mother-in-law. Defendant verified that this was correct. Department's Representative also pointed out that the receipts do not list a specific date on which rent monies were collected. Each receipt lists the month for the rent amount, and the \$325 amount. Defendant's Representative called as witness Defendant's mother-in-law, who testified that Defendant rented a mobile home on her property from March 2011 through October 2011. She added that she did not put specific dates on her receipts for anyone who rented from her, she merely indicated the month for which the payment was meant.
- 10) The Code of Federal Regulations, 7 CFR §273.16(c) (Exhibit M-1), defines an Intentional Program Violation (IPV) as:

(c) Definition of intentional Program violation. Intentional Program violations 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 [SNAP] 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).

- 11) The West Virginia Income Maintenance Manual, Chapter 1.2.E (Exhibit M-11), states:

The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility . . . The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions: denial of the application; closure of the active AG [assistance group]; removal of the individual from the AG; repayment of benefits; reduction in benefits.

- 12) The West Virginia Income Maintenance Manual, Chapter 20.2.C.2 (Exhibit M-12), states:

IPVs include making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, Food Stamp [SNAP] regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits.

- 13) The West Virginia Income Maintenance Manual, Chapter 20.6.A (Exhibit M-13) states:

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false . . . [I]t is not essential that an affirmative representation be made. Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false.

### VIII. CONCLUSIONS OF LAW:

- 1) The Department alleges that the Defendant willfully (or intentionally) reported in his SNAP case record he was separated from his wife and living alone in ██████ County, WV, when he was living with his wife and son in ██████ County, WV.
- 2) Although Department's evidence showed that Defendant received correspondence at his wife's mailing address in ██████ County and used his EBT card there, testimony and documentary evidence was sufficient to show that Defendant was renting a mobile home in ██████ County, and that he rented a post office box in ██████ WV, which is in ██████ County. Testimony also showed that Defendant's wife was his representative payee for his SSI benefits and his protective payee for benefits he received through the WV DHHR, so his correspondence from these and other agencies were sent to her home.
- 3) Based on the information offered during the hearing, it was not established through clear and convincing evidence that Defendant was living with his wife in ██████ County.

### IX. DECISION:

Falsely reporting one's household living arrangements during a SNAP application or review is a clear violation of the regulations. However, based on the evidence presented, I find the Department has not provided clear and convincing evidence that Defendant falsely reported his living arrangements.

The Agency's proposal to apply a SNAP disqualification is **reversed**. The Defendant will not be disqualified from participation in SNAP.

### X. RIGHT OF APPEAL:

See Attachment

**XI. ATTACHMENTS:**

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 1st Day of May, 2012.**

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**Stephen M. Baisden  
State Hearing Officer**