



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

December 20, 2012

RE: ---- v. WV DHHR
ACTION NO.: 12-BOR-2067

Dear Mr. ----:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

If you believe the decision was reached in error, you may appeal. See the attached explanation of Claimant's Recourse.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Tammy Hollandsworth, Repayment Investigator, WVDHHR

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

IN RE: ----,

Defendant,

v.

ACTION NO.: 12-BOR-2067

**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 ----. This hearing was conducted via telephone on December 6, 2012, in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources (WVDHHR). The hearing was originally scheduled for November 9, 2012, but was continued at the request of the Department.

All persons giving testimony were placed under oath.

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 an EBT card to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

Tammy Hollandsworth, WVDHHR Repayment Investigator

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

It should be noted that the Defendant failed to appear for the hearing, despite having received timely notice via certified, restricted mail. The hearing convened as scheduled on December 6, 2012, at 11:15 a.m., and as of 11:30 a.m., the Defendant had 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.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Defendant committed an Intentional Program Violation and should be disqualified from participation in the Supplemental Nutrition Assistance Program for a period of 12 months.

V. APPLICABLE POLICY:

7 CFR Sections 273.16, USDA Code of Federal Regulations
WVDHHR Common Chapters Manual Section 740.11.D
West Virginia Income Maintenance Manual Sections 1.2.E, 9.4.A.(2), 10.3.DD, 20.2 and 20.2.C.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Movant's Exhibits:

- M-1 Hearing Summary
- M-2 Food Stamp Claim Determination forms for period of May 2009 to September 2009
- M-3 Food Stamp Calculation Sheets for period of May 2009 to September 2009
- M-4 SNAP Issuance History-Disbursement
- M-5 Food Stamp Allotment Determinations
- M-6 Case Member History information
- M-7 Case Comments for the period of April 27, 2009- September 16, 2009
- M-8 Lease Agreement signed on April 6, 2009
- M-9 Statement of Advise & Consent signed by Defendant on January 5, 2012
- M-10 Statement of Advise & Consent signed by ----(aka ---- ----) dated December 12, 2011
- M-11 Waiver of Administrative Disqualification Hearing signed by ---- ---- (aka ---- ----) on July 6, 2012
- M-12 Referral/Claim Comments for the period of July 15, 2012, to August 27, 2012

- M-13 SNAP application/Rights and Responsibilities signed by Defendant on May 12, 2009
- M-14 Case redetermination form signed by ---- ---- on May 28, 2009
- M-15 Notifications of Intent to Disqualify dated July 5, 2012, and July 16, 2012
- M-16 Waivers of Administrative Disqualification Hearing sent to Defendant
- M-17 West Virginia Income Maintenance Manual Section 1.2.E
- M-18 West Virginia Income Maintenance Manual Sections 20.1 and 20.2
- M-19 West Virginia Income Maintenance Manual Section 20.6
- M-20 Code of Federal Regulations Section 273.16

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from WVDHHR Repayment Investigator Tammy Hollandsworth on August 29, 2012. The Repayment Investigator contends that the Defendant committed an Intentional Program Violation and recommends that he be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, for a period of 12 months.
- 2) Investigator Hollandsworth testified that the Department's Investigation and Fraud Management Unit received a referral alleging that the Defendant and his wife, ---- ---- (aka -- -- ---- and ---- ----) were living together, but receiving SNAP benefits in separate cases (see Exhibit M-7, Case Comments, and Exhibits M-13 and M-14, SNAP application and redetermination forms). The Defendant provided a Statement of Advise & Consent to WVDHHR Investigation and Fraud Management Criminal Investigator Timothy Moses on January 15, 2012 (M-9), admitting that he resided with ---- ---- from April 6, 2009 until September 2009 and failed to report this information to the Department. Investigator Hollandsworth provided a copy of a Lease Agreement (M-8) signed by the Defendant and his wife on April 6, 2009. The Investigator also provided a Statement of Advise & Consent signed by ---- (formerly ---- ----) on December 12, 2011 (M-10), in which Ms. ---- (----) admitted that she and the Defendant moved in together in April 2009 and that she committed welfare fraud.
- 3) As a result of the inaccurate Assistance Group information, Investigator Hollandsworth contends that the Defendant received \$1,430 in SNAP benefits to which he was not entitled for the period of May 2009 through September 2009 (see Exhibits M-2, M-3, M-4 and M-5).

The Defendant was sent Notifications of Intent to Disqualify (M-15) and Waivers of Administrative Disqualification Hearing (M-16) on July 5, 2012, and July 16, 2012.

- 4) West Virginia Income Maintenance Manual Section 1.2.E (M-17) states that it is the client's responsibility to provide information about his/her circumstances so the worker is able to make a correct decision about his or her eligibility.
- 5) West Virginia Income Maintenance Manual Section 9.4.A.(2) states that spouses who are married under State law and reside together must be included in the same SNAP Assistance Group.

6) West Virginia Income Maintenance Manual Section 20.2 (M-18):

When an AG (Assistance Group) has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.

7) West Virginia Income Maintenance Manual Section 20.2.C.2 (M-18):

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

Once an IPV (Intentional Program Violation) is established a disqualification penalty is imposed on the AG (Assistance Group) members who committed the IPV...

The penalties are as follows: (Section 9.1A, 2, h) 1st Offense: 1 year (Disqualification).

8) WVDHHR Common Chapters Manual Section 740.11.D provides that an 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 relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp benefits.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when an Assistance Group has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. If it is determined that an Intentional Program Violation has been committed, an appropriate disqualification penalty is imposed.
- 2) The Defendant admitted in a written statement to the Department's Investigation and Fraud Management Unit that he provided false information concerning his household composition for the period of April 2009 to September 2009. As a result of the inaccurate information, the Defendant received \$1,430 in SNAP benefits to which he was not entitled.

- 3) Based on information provided during the hearing, the Department has correctly proposed the imposition of a 12-month SNAP disqualification penalty based on the commission of an Intentional Program Violation.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to impose an Intentional Program Violation penalty and disqualify the Defendant from the SNAP for a period of 12 months. The disqualification period will begin in February 2013.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of December 2012.

**Pamela L. Hinzman
State Hearing Officer**