



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 Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your Supplemental Nutrition Assistance Program Administrative Disqualification Hearing held November 1, 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 misrepresented your household composition 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  
Andrew LaCara-Repayment Investigator, IFM

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

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

**Defendant,**

**v.**

**ACTION NO.: 12-BOR-2114**

**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 ---- conducted on November 1, 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:**

----, Defendant  
Andrew LaCara, 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 October 31, 2011
- D-2 Computer printout of case comments from September 21, 2011, to June 14, 2012
- D-3 Sworn Statement from ----, Child Protective Service Worker dated May 18, 2012
- D-4 Application for Emergency Assistance dated February 3, 2012
- D-5 Combined Application and Review Form with associated Rights and Responsibilities dated May 31, 2012
- D-6 Food Stamp Claim Determination
- D-7 Notification of Intent to Disqualify dated July 31, 2012
- D-8 Hearing Request
- 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 September 5, 2012, a request for an Administrative Disqualification Hearing was received by the Board of Review from the Department's Repayment Investigator, Andrew LaCara (Investigator LaCara). Investigator LaCara 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) The Department contends that the Defendant intentionally violated SNAP regulations by providing false statements concerning his household composition (Exhibit D-7) at an October 31, 2011, recertification for SNAP benefits and subsequent recertifications.

- 3) Investigator LaCara testified that the Defendant completed a SNAP recertification (Exhibit D-1), on behalf of his household, on October 31, 2011. During the recertification, the Defendant reported that his household consisted of himself, his cohabiter, and four children.
- 4) Investigator LaCara testified that the Defendant completed an application for Emergency Assistance on February 3, 2012, and reported that his household consisted of himself, his cohabiter, and three children.
- 5) Investigator LaCara testified that the Department became aware through a Child Protective Service (CPS) investigation that three of the reported children were not residing with the Defendant and his cohabiter at the time of the October 31, 2011, SNAP recertification. Investigator LaCara testified that ---- (CPSW ----), a Child Protective Service Worker for the Department of Health and Human Resources, completed an interview at the Defendant's home on May 1, 2012. Investigator LaCara provided a written sworn statement (Exhibit D-3) from CPSW ---- concerning his findings from the May 1, 2012, interview. This exhibit documents that CPSW ---- questioned the Defendant concerning the whereabouts of three of the reported children. Mr. ---- documented in his statement that the Defendant reported that the children did not relocate with himself and his cohabiter to ----, ---- and they were currently residing with their maternal grandmother in ---- County, ---- and had been there for the last eight to ten months. CPSW ---- noted in the statement that the Defendant did not provide a name or address of the maternal grandmother.
- 6) Investigator LaCara testified that the Defendant and his cohabiter completed an additional recertification for SNAP benefits on May 31, 2012 (Exhibit D-5). During this recertification, the Defendant reported that the household consisted of himself, his cohabiter, and four children. Upon conclusion of the recertification, the Department requested verification from the Defendant concerning the whereabouts of the three children based on their previous knowledge that the children were residing in the state of ----. Investigator LaCara testified that the Defendant failed to provide verification of the children's whereabouts and the household's SNAP benefits were subsequently decreased on June 24, 2012. Investigator LaCara testified that no verification of the children's whereabouts has been provided prior to the Administrative Disqualification Hearing.
- 7) Investigator LaCara presented a Food Stamp Claim Determination (Exhibit D-6) to demonstrate that by providing false information concerning his household composition, an overpayment of SNAP benefits was issued to the Defendant in the amount of \$3164.00 for the months of December 2011 through May 2012.
- 8) The Defendant requested that the Administrative Disqualification Hearing be postponed in order to provide him the opportunity to secure additional evidence to demonstrate that the children have been residing at his residence. The Defendant was issued notice of the scheduled hearing on September 27, 2012, which documented that the hearing may be rescheduled upon written request no later than ten business days prior to the date of the hearing. In absence of such written request ten days prior to the hearing, the Defendant's verbal motion for a continuance was denied.

The Defendant contended that the children have always resided at his residence and Mr. ---- misunderstood his statements concerning their whereabouts at the May 2012 interview. The Defendant purported that the children were visiting their grandparents at the time of the interview and they attempt to visit their grandparents every weekend. The Defendant indicated that lease agreements, statements from neighbors and the children's grandparents would support his testimony; however, he provided no evidence to support his position. The Defendant indicated that a review of his Electronic Benefit Transfer (EBT) card transaction history would reveal purchases for baby food, etc. However, Mr. LaCara indicated that only transactions are displayed on such report and not individual purchases.

- 9) The Defendant signed and completed the Rights and Responsibilities (Exhibit D-1, D-5) 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 misrepresented his household composition at recertifications for SNAP benefits on October 31, 2011, and May 31, 2012, by reporting three of the four children as residents of his household, when in fact they were residing in another

state. Sworn statements from a Department employee reveals the Defendant reported that the children in question had been residing with their grandparents at least eight months prior to his May 2012 interview. During the Defendant's May 2012 SNAP recertification, he was afforded the opportunity to provide verification of his children's whereabouts and failed to submit the necessary documentation. The Defendant's failure to verify the children's whereabouts in May 2012, further corroborates the Department's position that the children were no longer residing in the state of West Virginia.

- 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**