



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street, West  
Charleston, WV 25313

Earl Ray Tomblin  
Governor

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

January 5, 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 (ADH) held January 5, 2012, for the purpose of determining whether you 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 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 SNAP is based on current policy and regulations. Some of these regulations state as follows: 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 [SNAP] Act, the SNAP Regulations, or any State statute relating 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 period of 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 submitted at the hearing did not support that you intentionally provided false information about your household's circumstances in order to receive SNAP for which you were not entitled.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to apply a one (1) year SNAP disqualification penalty against you based on the determination that you committed an Intentional Program Violation.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Natasha Jemerison, Kanawha DHHR

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

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

**Defendant,**

**v.**

**ACTION NO.: 11-BOR-2402**

**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 held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This hearing was convened on January 5, 2012.

**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  
Natasha Jemerison, Department Representative  
Tammy Drumheller, Department witness

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Defendant committed an intentional program violation and should be disqualified for one year from participation in SNAP.

**V. APPLICABLE POLICY:**

7 CFR § 273.16 USDA Code of Federal Regulations  
Common Chapters Manual Chapter 700, Appendix A  
West Virginia Income Maintenance Manual §1.2, 9.1.A.2.h and 20.2

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

**Department's Exhibits:**

- M-1 Benefit Recovery Referral screen from the Department's computer system dated November 8, 2011
- M-2 West Virginia Income Maintenance Manual §1.2, E
- M-3 Food Stamp Claim Determination Form and supporting documentation
- M-4 Code of Federal Regulations 7 CFR 273.16
- M-5 SNAP review application form dated November 22, 2010
- M-6 Children's Medicaid Application form dated March 7, 2011
- M-7 SNAP Application form dated June 3, 2011
- M-8 Rights and Responsibilities form signed June 3, 2011
- M-9 [REDACTED] Magistrate Court document dated September 19, 2011, sworn written statement from relative dated September 23, 2011
- M-10 West Virginia Income Maintenance Manual §2.2
- M-11 West Virginia Income Maintenance Manual §20.6
- M-12 Notification letters to Defendant dated November 8, 2011
- M-13 Notice to Appear from [REDACTED] Magistrate Court dated August 9, 2011

**Claimant's Exhibits:**

- D-1 Circuit Court of [REDACTED] County, West Virginia, Court Order dated November 8, 2011

**VII. FINDINGS OF FACT:**

- 1) A request for an Administrative Disqualification Hearing, hereinafter ADH, was received by the Board of Review from the Department of Health and Human Resources, hereinafter Department, on November 22, 2011. The Department contends that the Defendant has committed an Intentional Program Violation, hereinafter IPV, and made a fraudulent statement

or misrepresentation regarding his household composition in order to receive SNAP, and is recommending that he be disqualified from participation in SNAP for a period of one (1) year.

- 2) The Department contends that the Defendant intentionally reported incorrect household composition for his SNAP household by withholding the fact that a member of his SNAP household, [REDACTED], was not living in his household. The Department purports that the evidence will show that the child was living with his aunt and uncle, [REDACTED] and -----, from approximately April 2010 and that the Defendant reported that he was living in his household.
- 3) The Department presented evidence which supports that the Defendant completed a SNAP application form (M-5) on or about November 22, 2010, at which time he reported that his son, [REDACTED] lived in his household.
- 4) Additional evidence (M-6) supports that the Defendant submitted to the Department a self-completed application for Children's Medicaid on or about March 7, 2011, at which time he again reported that his son, [REDACTED] lived in his household.
- 5) Additional evidence (M-7) supports that the Defendant submitted to the Department an application for WV WORKS cash assistance, SNAP, and Medicaid, on or about June 3, 2011, at which time he again reported that his son lived in his household. He also signed the Rights and Responsibilities [R&R] form (M-8) on that date indicating he understood his responsibility to report accurate and truthful information and the penalties for failure to do so. By signing this R&R form, he also indicated that he understood his responsibility to report within 5 days of his becoming aware that a child will no longer be living with him when the child moves out of his home for at least 30 days.
- 6) The Department's witness, Tammy Drumheller, is an investigator employed by the Department. She testified that she investigated the circumstances of the Defendant's household composition after receiving a complaint. She stated that she interviewed the Defendant's brother-in-law, -----, on September 23, 2011, at which time ----- provided her with a sworn written statement (M-9). In his statement, ----- indicated that he has lived at [REDACTED] [REDACTED] West Virginia, for 3 months. He added that before this he lived at [REDACTED] and that -----has lived with him for 1 ½ years at both addresses. Additionally in his statement, he adds that he owns the property. ----- was not available for testimony.
- 7) Ms. Drumheller stated that ----- showed her ----- social security card which she claims would support that the child's social security card was mailed to -----'s [REDACTED] [REDACTED] address at some point. This document was not entered into evidence, and it is unclear when this document was mailed to the [REDACTED] address. Ms. Drumheller added that she obtained a copy (M-9) of a document from the [REDACTED] County, West Virginia, Magistrate Court, which was signed by -----, who is -----'s wife and the Defendant's sister, on September 19, 2011. This document supports that ----- listed the Defendant's address as [REDACTED] during the month of September 2011.

- 8) Evidence (M-3) in the form of case comments from the Department's computer system supports that the Defendant was interviewed by a caseworker at the Department's ██████████ County, West Virginia, office on or about October 13, 2011, and that he did not report that his son was not living in his household. The comments also indicate that the Department was already aware of the child living with ----- at this time but it is unclear whether the Department made the Defendant aware of this information. The Defendant stated he believed the situation to be temporary and did not believe it to be a situation that required him to report at that time that his son was temporarily living in his own home but with -----.
- 9) The Defendant testified that the relationship between him and -----is not good. He stated that he has been involved in a property dispute with them since August 2011 when he was forced by police to leave his home at ██████████ by police. He explained that he and his mother own the property, but had allowed -----to stay with them there temporarily. He added that once the couple moved into the home they started court proceedings to take ownership of the property and the police forced him to move out of the home until the dispute could be resolved within the court system.
- 10) The Defendant stated that he lived in the home at ██████████ until on or about August 3, 2011. He added that at that time he began staying with different relatives temporarily and that his son stayed in the ██████████ property with ----- . He stated that he believed the situation to be temporary and that once the court ruled he would move back into the home with his son.
- 11) The Defendant submitted a copy of a court order (D-1) dated November 8, 2011, from the Circuit Court of ██████████ County, West Virginia, in which the Judge made certain Findings of Fact and Conclusions of Law. The Judge found that the Defendant and his mother are the owners to the real property at ██████████ and that ----- began residing with the Defendant and his mother there on or about July 16, 2011. The Judge also found that the Defendant and his mother withdrew their consent to -----living with them at the premises as of August 1, 2011, and that from at least mid-August 2011 the Defendant was prevented from returning to his residence at ██████████ having no alternate residence of his own and seeking shelter with family members. The Judge found that the parties show a history of conflict and disagreement
- 12) West Virginia Income Maintenance Manual §1.2 (E) states that it is the client's responsibility to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 13) West Virginia Income Maintenance Manual § 20.2 (C) (2) states in pertinent part:

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

The individual(s) who is found to have committed an IPV is ineligible to participate in the program for a specified time, depending on the number of offenses committed.

Once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV.

- 14) Common Chapters Manual 700, Appendix A, Section B, provides that an IPV 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 [SNAP] Act, the SNAP Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits.
- 15) Common Chapters Manual 700, Appendix A, Section G, states that the State Hearing Officer shall base the determination of IPV on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV as defined in Section B of this Appendix.
- 16) West Virginia Income Maintenance Manual §9.1.A.2.h states:

Intentional Program Violation (IPV)

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

**VIII. CONCLUSIONS OF LAW:**

- 1) The policy and regulations that govern SNAP state that a SNAP 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) The Defendant clearly was aware of his responsibility to report truthful and accurate information and the penalties involved for failing to do so. He read and signed several applications as well as the Rights and Responsibilities form during the period in question which clearly informed him of these responsibilities.

- 4) The Defendant also was aware and understood that if a child moves out of his home for at least 30 days, he was required to report this change within 5 days of becoming aware that the child will no longer be living with him.
- 5) The totality of the evidence does not support that the Defendant intentionally withheld information about his son living with ----- in his home but without him being present. There is no evidence the Defendant signed applications or Rights and Responsibilities forms after the August 2011 incident which forced him to temporarily move out of the home in which his son lived until a court could intervene in November 2011. All applications submitted by the Department (M-5, M-6, M-7, and M-8) were completed prior to this set of circumstances occurring. The Defendant's testimony is found to be credible and supported by the evidence. His claim that he did not report that his child was temporarily living with ----- because he believed the situation to be temporary and therefore not mandatory to report, is credible.
- 6) Additionally, although the Department purports that the evidence shows the child lived with --- ----- and not with the Defendant since approximately April 2010, the totality of the evidence does not support this. Evidence (M-9) in support of the child living with ----- comes from a sworn written statement given by ----- during the midst of the court conflict regarding ownership of the residence. -----'s statement is given less weight because he was not present for testimony, and because the evidence shows a recurring conflict between the parties. ----- also claimed, in his statement, to own the property at [REDACTED] [REDACTED]. The Court clearly found (D-1) this not to be the case. Additional evidence (M-9) in the form of a court document completed by ----- on September 19, 2011, and showing that the Defendant lived at a different address than his son on that date is not disputed by the Defendant. The testimony from Ms. Drumheller regarding the social security card being mailed to the child at -----' address is not significant because it does not show when this occurred and does not support that the child lived with ----- at the time of its receipt.
- 7) The Department was not correct in its determination that the Defendant has committed an Intentional Program Violation by intentionally withholding information about his household composition. Although there may be an overpayment involved, there is no intentional program violation.

**IX. DECISION:**

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **reversed.**

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 5<sup>th</sup> Day of January, 2012.**

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**Cheryl Henson  
State Hearing Officer**