



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

February 14, 2012

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 February 14, 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 supports 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 **uphold** 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. Your disqualification penalty period will begin April 1, 2012.

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.: 12-BOR-349

**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 February 14, 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

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 December 15, 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 application form dated December 2, 2010 and supporting documentation
- M-6 Rights and Responsibilities form dated December 2, 2010
- M-7 Sworn written statement dated November 22, 2011
- M-8 West Virginia Income Maintenance Manual §2.2
- M-9 West Virginia Income Maintenance Manual §20.6
- M-10 Notification letters dated December 15, 2011

Claimant's Exhibits:

None

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 January 5, 2012. The Department contends that the Defendant has committed an Intentional Program Violation, hereinafter IPV, and made a fraudulent statement or misrepresentation regarding her household composition in order to receive SNAP, and is recommending that she 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 her SNAP household during her December 2, 2010 SNAP application process by withholding the fact that -----, the father of her child, was living in her household.
- 3) The Department presented evidence which supports that the Defendant completed a SNAP application form (M-5) on or about December 2, 2010, at which time she did not report that --- ----- was living in her household. She signed the application form (M-5) indicating that she understood her responsibility to report accurate and truthful information and the penalties for failure to do so. She also signed the Rights and Responsibilities form (M-6) further certifying that she understood her responsibility to report accurate and truthful information.
- 4) Additional evidence (M-7) supports that the ----- provided a sworn written statement to a Department investigator on November 22, 2011, at which time he is documented as stating that he has lived with the Defendant since November 2010 at her reported [REDACTED] address, and that he and the Defendant have at least one (1) common child who also lives in the home.
- 5) The Defendant testified that ----- is not supposed to sign anything without her being with him. She stated that the Social Security Administration has appointed her “over his money.” She stated that she believes he is bipolar, but could offer no definitive diagnosis which relates to his being unable to provide statements without her being present.
- 6) The Defendant stated that ----- “stays” with her approximately four (4) days per week, and that sometimes he stays with his friend. She added that ----- utilizes her address because he is a convicted sex offender and has provided the address to the State Police for their records. She stated that he does this because, “he doesn’t want to get into trouble with the State Police. She stated that he keeps some of his clothes with her and some at his friend’s residence.
- 7) The Defendant further stated that they hold themselves out to the community as a couple, and they have been together for “quite a while.” She added that when they met in 2002 they began cohabitating in the [REDACTED] area of [REDACTED] West Virginia. She stated that they “split up” for a while during 2007, but added that they are together now.
- 8) 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.
- 9) 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.

- 10) 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.
- 11) 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.
- 12) 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:

- 1st Offense: 1 year
- 2nd Offense: 2 years
- 3rd 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, misrepresents, conceals, or withholds 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 her responsibility to report truthful and accurate information and the penalties involved for failing to do so. She read and signed the December 2, 2010 application as well as the Rights and Responsibilities form which clearly informed her of these responsibilities.

- 4) The totality of the evidence supports that the Defendant intentionally withheld information about her household composition during her December 2, 2010 SNAP application. She clearly did not report that her children's father, ----- -----, was living in her home. The evidence supports that ----- ----- was living in her home at the time of the application. ----- ----- clearly reported that he lived with the Defendant at that time. The Defendant's claims that he was not capable of providing such statements are not supported by evidence. Furthermore, the Defendant's statements made during the hearing support that ----- ----- lived with her four (4) days per week and she was not clear on where he lived for the rest of the week. Her claims that ----- ----- used her address as his own for purposes of reporting to the State Police only are not credible.
- 5) As a result, the Department was correct in its determination that the Defendant has committed an IPV by intentionally withholding information about her household composition.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**. The Defendant's disqualification penalty period will begin April 1, 2012.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of February, 2012.

**Cheryl Henson
State Hearing Officer**