



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, 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 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 shows that you intentionally provided false information about your household's circumstances in order to receive SNAP for which you were not eligible.

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 an Intentional Program Violation. Your penalty 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-352

**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 (ADH) 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:

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:

- D-1 Benefit Recovery Referral Screen from Department's computer system dated December 15, 2011
- D-2 West Virginia Income Maintenance Manual §1.2.E, two (2) pages
- D-3 Food Stamp Claim Determination forms and supporting documentation
- D-4 Code of Federal Regulations §7CFR273.16
- D-5 SNAP application dated November 23, 2011 and supporting documentation
- D-6 Rights and Responsibilities form dated November 23, 2011
- D-7 Sworn written statement dated November 22, 2011, from Defendant
- D-8 West Virginia Income Maintenance Manual §2.2
- D-9 West Virginia Income Maintenance Manual §20.6
- D-10 Notification letters to Defendant 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 withheld information 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) Notification of the February 14, 2012 hearing was mailed to the Defendant on or about January 10, 2012, via first class mail delivery, as the Defendant is a current recipient of benefits through the Department and resides at an address known to be good by the Department.
- 3) The hearing was convened as scheduled at 9:00 a.m., and as of 9:26 a.m. the Defendant failed to appear or notify the Board of Review of any conflict preventing him from appearing. 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.
- 4) On or about December 15, 2011, the Department sent the Defendant a Notification of Intent to Disqualify (D-10) form indicating that it had reason to believe he intentionally violated a SNAP rule by not reporting that he lived in the same household with ----- and their common child.
- 5) The Department presented evidence to show that the Defendant completed an application for SNAP (D-5) on November 23, 2010, at which time he reported that he lived alone. He signed the application certifying that all statements on the form had been read by him, or read to him, and that he understood the questions. He further certified that all the information provided by him was true and correct, and that he understood that it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits to which he was not by law entitled. He also signed the Rights and Responsibilities form (D-6) which further certified his understanding of his responsibilities.
- 6) The Department also presented evidence (D-7) to show that the Defendant signed a sworn written statement on November 22, 2011, in which he told an investigator that he and ----- live together, and that they had lived together on [REDACTED] in [REDACTED] West Virginia since November 2010. Furthermore, the statement documents that the Defendant also told the investigator that he is disabled and that three (3) children also live with them, one (1) of which is his and [REDACTED] biological child.
- 7) 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.
- 8) 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.

- 9) Common Chapters Manual 700, Appendix A, Section B, specifies 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.
- 10) 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.
- 11) 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 specify 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 was clearly aware of his responsibility to report truthful and accurate information and the penalties involved for failing to do so. He read and signed the November 23, 2010 SNAP application form, as well as the Rights and Responsibilities form, which clearly informed him of these responsibilities.
- 4) The evidence is sufficient to show clearly and convincingly that the Defendant intentionally withheld information from the Department about his household composition during the November 23, 2010 SNAP application process. He reported that he lived alone when in fact he was living with ----- as well as their biological child and others.

- 5) The Department was correct in its determination that the Defendant has committed an IPV by intentionally reporting false information about his household composition.

IX. DECISION:

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