



**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**

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

May 31, 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 held May 17, 2012 to determine 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.

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 Food Stamp 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 Section 20.2 and Code of Federal Regulations-7 CFR Section 273.16)

Documentation and testimony provided during the hearing fails to demonstrate that you provided inaccurate information about your household composition while receiving SNAP benefits during the period of August 2006-October 2007.

It is the decision of the State Hearing Officer that you did not commit an Intentional Program Violation and a 12-month disqualification penalty cannot be applied.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Andrew Petitt, Criminal Investigator, WVDHHR

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

IN RE: ----- ,

Defendants,

v.

ACTION NO.: 12-BOR-448 and 12-BOR-449

**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 telephonically on May 17, 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 March 7, 2012, and again for April 11, 2012, but was continued on both dates at the Defendants' request.

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:

-----, Defendant
-----, Co-Defendant
Andrew Petitt, Criminal Investigator, WVDHHR

Presiding at the hearing was Pamela L. Hinzman, 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 Defendants committed an Intentional Program Violation and should be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a period of 12 months.

V. APPLICABLE POLICY:

7 CFR Sections 273.11 and 273.16, USDA Code of Federal Regulations
WVDHHR Common Chapters Manual Section 740.11.D and 740.22.M
West Virginia Income Maintenance Manual Sections 1.2.E, 9.1.A.2, 20.2 and 20.2.C.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Food Stamp Claim Determination forms for period of August 2006-October 2007
- D-3 SNAP Issuance History-Disbursement
- D-4 Food Stamp Allotment Determinations
- D-5 Case Member History
- D-6 Case Comments for February 23, 2006-November 7, 2007
- D-7 Application for Child Care Services dated February 24, 2006
- D-8 Child Care Review Form dated July 27, 2006
- D-9 Change of Information Notification dated August 14, 2006
- D-10 Child Care Review Form dated August 22, 2007
- D-11 Combined Application and Review Form dated September 15, 2006
- D-12 Combined Application and Review Form dated October 23, 2006
- D-13 Combined Application and Review Form dated April 19, 2007
- D-14 Combined Application and Review Form dated August 3, 2007
- D-15 Combined Application and Review Form dated October 25, 2007

- D-16 Notifications of Intent to Disqualify and Waivers of Administrative Disqualification Hearing dated January 17, 2012, sent to Defendant and Co-Defendant
- D-17 West Virginia Income Maintenance Manual Section 1.2.E
- D-18 West Virginia Income Maintenance Manual Section 9.1.A.1
- D-19 West Virginia Income Maintenance Manual Sections 20.1 and 20.2
- D-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 Criminal Investigator Andrew Petitt on January 19, 2012. The Criminal Investigator contends that the Defendant, -----, and Co-Defendant, -----, committed an Intentional Program Violation, and recommends that they both be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, for a period of 12 months.
- 2) Investigator Petitt testified that the Department's Investigations and Fraud Management Unit received a referral indicating that the Defendant and Co-Defendant reported incorrect information concerning household composition in order to receive benefits to which they were not entitled. The Investigator contends that the incorrect information resulted in a SNAP over issuance of \$1,645 for the period of August 2006-October 2007 (Exhibit D-2). Case Comments (D-6) reveal that the Co-Defendant was an active SNAP recipient on August 28, 2006 when she reported that the Defendant had moved back into her household. Several SNAP and/or Medicaid applications/redeterminations (D-11 through D-15) were completed by the Defendant and Co-Defendant between September 2006 and October 2007. The Defendant was reported as a member of the household for the entire time period and Exhibit D-3 shows SNAP Issuance History for the case.

Investigator Petitt stated that Mountain Heart Child Care Resource and Referral, an Agency that administers the Department's Child Care Program, processed Child Care applications and/or reviews for the Co-Defendant in February 2006, July 2006 and July 2007 (D-7, D-8 and D-10), and the Co-Defendant did not list the Defendant as a household member. The Co-Defendant completed a Change of Information Notification form (D-9) with Mountain Heart on August 14, 2006, adding her newborn daughter, -----, to her Child Care case. Case Comments (D-6) pertaining to the Defendants' SNAP/Medicaid benefits indicate that the Defendant was reported as being out of the household in May 2006. He was added back into the SNAP Assistance Group after the Co-Defendant left a voice mail message for her worker on August 25, 2006 and indicated the Defendant had returned as of August 17, 2006.

Investigator Petitt testified that – as a result of the conflicting information - the Department determined that the Defendant was not living in the home with the Co-Defendant as had been reported for SNAP purposes.

- 3) ----- testified that ----- was in and out of the household on several occasions during the time period due to his medical issues. ----- testified that she informed both the Department and Mountain Heart every time her husband left or came back to the household. ----- contended that instructions on the Child Care Review Form state that cases must be reviewed every six months. He pointed out that the only Child Care Review Forms provided by the Department are dated July 27, 2006, and July 16, 2007, and asserted that a review appears to be missing from the records which may have addressed the household composition changes. It should be noted that ----- signature appears on four of the applications/reviews completed for SNAP and/or Medicaid benefits for the time period in question. Case Comments dated July 17, 2007 (D-6) indicate that ----- spoke with an Economic Service Supervisor on July 16, 2007 and requested that ----- have an Electronic Benefits Transfer (EBT) card of his own. On August 17, 2007, the Department received a Non-Emergency Medical Transportation application listing trips for both -----.
- 4) West Virginia Income Maintenance Manual Section 1.2.E (D-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 9.1.A.2 states that spouses who reside together must be included in the same SNAP Assistance Group.
- 6) West Virginia Income Maintenance Manual Section 20.2 (D-19):

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 (D-19):

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.
- 9) WVDHHR Common Chapters Manual Section 740.22.M states:

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) 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 Department contends that the Defendants intentionally provided false information concerning their household composition for the period of August 2006 to October 2007 to receive SNAP benefits to which they were not entitled.

Evidence provided by the Department clearly demonstrates that ----- were in the WVDHHR office together on several occasions from August 2006 to October 2007 to complete applications/redeterminations for the SNAP and Medicaid Programs.

The only evidence in support of the Department's allegation that ----- was not in the home is documentation from Mountain Heart Child Care Resource and Referral showing that ----- did not report his presence. ----- credibility is called into serious question by the totality of the evidence. Particularly, she requested an EBT card for ----- on July 16, 2007 and submitted a NEMT application that included trips for him on August 17, 2007. In August 2007, she completed a Child Care Review Form (mailed on July 16, 2007) and failed to list ----- as a

household member. The fact that ----- signed four application/review forms for economic services – combined with the questionable nature of the information reported on the Child Care forms – results in the conclusion that clear and convincing evidence has not been provided to determine that ----- was absent from the home during the time period in question for SNAP purposes. The issue of potential misrepresentation in regard to the Child Care Program is beyond the scope of a SNAP Administrative Disqualification Hearing.

- 3) The Department’s proposal to impose a 12-month SNAP disqualification penalty for the Defendants based on the commission of an Intentional Program Violation cannot be affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department’s proposal to impose an Intentional Program Violation penalty and disqualify the Defendant and Co-Defendant from the SNAP for a period of 12 months.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of May, 2012.

**Pamela L. Hinzman
State Hearing Officer**