



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

March 15, 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 March 15, 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-582

**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 March 15, 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
Debbie Cooper, Department witness
Misty Fielder, Department witness
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 Department's computer system dated January 95, 2012
- M-2 West Virginia Income Maintenance Manual §1.2.E
- M-3 Food Stamp Claim Determination forms and supporting documentation
- M-4 Code of Federal Regulations §7CFR273.16
- M-5 SNAP review application dated September 8, 2011, and supporting documentation
- M-6 Rights and Responsibilities form dated September 8, 2011
- M-7 Various documentation from Department's computer system
- M-8 West Virginia Income Maintenance Manual §2.2
- M-9 West Virginia Income Maintenance Manual §20.6
- M-10 Notification letters to Defendant dated January 19, 2012
- M-11 Sworn written statement dated September 15, 2011, by PC
- M-12 Sworn written statement dated September 15, 2011, by WC

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 February 3, 2012. The Department contends that the Defendant has committed an Intentional Program Violation, hereinafter IPV, and made a fraudulent statement or withheld information 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) Notification of the March 15, 2012 hearing was mailed to the Defendant on or about February 14, 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 9:20 a.m. the Defendant failed to appear or notify the Board of Review of any conflict preventing her 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 January 19, 2012, the Department sent the Defendant a Notification of Intent to Disqualify (M-10) form indicating that it had reason to believe she intentionally violated a SNAP rule by not reporting that she lived in the same household with her parents. The Defendant was under twenty-two (22) years of age at the time of the alleged false report.
- 5) The Department presented evidence to show that the Defendant completed a review application interview for SNAP (M-5) on September 8, 2011, at which time she reported that she did not live with her parents. She reported that she lived in a dwelling owned by her parents, and that although her parents also lived there, she reportedly lived in a separate section of the home that had a separate entrance which was completely separate from that of her parents. The Defendant signed the application (M-5) as well as the Rights and Responsibilities form (M-6) indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 6) Misty Fielder is an Economic Service Worker employed with the Department. She stated that she interviewed the Defendant on September 8, 2011. She stated that the Defendant told her at first that she lived with her parents, but that after she informed the Defendant that her parents would have to be included in the SNAP case because the Defendant was under twenty-two (22) years of age, the Defendant then stated that she had a separate apartment in her home with a separate entrance. Ms. Fielder confirmed that she referred the case for investigation to confirm the Defendant lived in a separate apartment.
- 7) Tammy Drumheller is a Front-End Fraud Unit investigator employed with the Department. She stated that she investigated the living arrangements of the Defendant during September 2011. She added that she spoke with the Defendant on or about September 15, 2011, and that the Defendant told her she did not live with her mother; however, she was unable to provide an address for her mother. She stated that at one point the Defendant reported that her mother lived in the basement of the home; but at another point in the same conversation the Defendant reported that her mother was building a home "down the road" and that was where they were living.
- 8) Ms. Drumheller stated that she and Debbie Cooper, another Front-End Fraud Unit investigator, returned to the area late the day of September 15, 2011, around 9:45 p.m., and obtained a sworn written statement (M-11) from [REDACTED], a neighbor who lives two (2) houses down from the home in question. In the statement, [REDACTED] reported that she knows that the

Defendant's parents live at the residence in question and that she believes the Defendant may be living with them. She stated that she and Ms. Cooper also obtained a sworn written statement (M-12) from -----that same evening. She added that -----is the Defendant's step-grandmother. In the statement, -----reported that her son lives with the Defendant's mother at the Defendant's reported address of -----, in ██████████ West Virginia. She also reported that the Defendant has been staying with them at this address and that the Defendant's parents are not building another home at this time. Ms. Drumheller added that on the same date, September 15, 2011, both she and Ms. Cooper walked around the Defendant's reported home and could not find evidence of a separate entrance. Ms. Cooper corroborated Ms. Drumheller's statements, and added that previously during January and April 2011 the Defendant falsely reported her address which was later determined to be an empty residence that was for sale.

9) Additional evidence presented by the Department (M-7) supports that the Defendant's mother listed the Defendant's residence as her own on December 29, 2010, with the West Virginia Department of Motor Vehicles, and the Defendant's step-father listed a vehicle he owned at the same address on or about May 25, 2010. Other evidence (M-7) supports that both parents are employed.

10) 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.

11) 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.

12) 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.

13) 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.

14) 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 her responsibility to report truthful and accurate information and the penalties involved for failing to do so. She read and signed the September 2011 SNAP application form, as well as the Rights and Responsibilities form, which clearly informed her of these responsibilities.
- 4) The evidence is sufficient to show clearly and convincingly that the Defendant intentionally withheld information from the Department about her household composition during the September 2011 SNAP review application process. She reported that she did not live with her parents when the evidence supports that she did.
- 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 15th Day of March, 2012.

**Cheryl Henson
State Hearing Officer**