



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

April 4, 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 April 3, 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 May 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-678

**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 April 3, 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:

Jennifer Butcher, 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:

- D-1 Benefit Recovery Referral Screen from Department's computer system dated March 28, 2012
- D-2 West Virginia Income Maintenance Manual §1.2.E
- D-3 Food Stamp Claim Determination forms and supporting documentation
- D-4 Code of Federal Regulations §7 CFR273.16
- D-5 SNAP application dated May 20, 2011 and supporting documentation
- D-6 Rights and Responsibilities form dated May 20, 2011
- D-7 Two (2) sworn written statements dated October 14, 2011, and case comments from Department's computer system dated October 28, 2011, and December 7, 2011
- 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 13, 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 February 21, 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 April 3, 2012 hearing was mailed to the Defendant on or about February 28, 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 10:00 a.m., and as of 10:15 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 December 13, 2011, the Department sent the Defendant a Notification of Intent to Disqualify (D-10) form indicating that it had reason to believe she intentionally violated a SNAP rule by reporting that ---- ---- was a member of her household when she did not live in her home "full time."
- 5) The Department presented evidence to show that the Defendant completed an application for SNAP (D-5) on May 20, 2011, at which time he reported that her daughter, ---- ----, was living in her household. She signed the application (D-5) and Rights and Responsibilities form (D-6), and by doing so indicated that she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 6) The Department's witness, Tammy Drumheller, is a Front-End Fraud Investigator employed with the Department and housed at the Kanawha County, West Virginia, Department of Health and Human Resources office located in Charleston, West Virginia. She testified that she received a referral during October 2011 to investigate the circumstances of the Defendant's case. She stated that she spoke with an employee at the apartment complex [--- ---] where the Defendant lived at the time, and she added that she obtained a sworn written statement (D-7) from him on October 14, 2011. She stated that this individual told her that the Defendant's daughter does not live with her and that he had begun the process to move the Defendant to a smaller unit because she was not eligible for a two (2) bedroom unit.
- 7) Ms. Drumheller also stated that she obtained a sworn written statement (D-7) from the Administrative Assistant at --- --- on October 14, 2011. She stated that the witness told her that she was aware that the Defendant's daughter did not live with her at the apartment complex. She stated that this witness told her that the child was living with the Defendant's mother at another location. She stated that this witness also told her that she was in the process of moving the Defendant to a one (1) bedroom apartment because she does not have a child living with her and is therefore not eligible for a two (2) bedroom unit. She stated that the witness told her that she has only seen the Defendant's daughter during the summer and that she has never been enrolled at the local school.
- 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, 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.

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 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 May 20, 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 reported false information to the Department about her household composition during the May 20, 2011 SNAP application process. She reported that her child lived in the household with her at --- ---, when the evidence supports that the child was living with the Defendant's mother at another location and that she did not live with the Defendant. Two employees at --- --- reported to a Department Investigator that the child does not live with the Defendant, and their sworn written statements support that the child lived somewhere else and only visited the Defendant during the summer.
- 5) The Department was correct in its determination that the Defendant has committed an IPV by intentionally reporting false 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 penalty period will begin May 1, 2012.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of April, 2012.

**Cheryl Henson
State Hearing Officer**