



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 5, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1369

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Rebecca Pancake, Repayment Investigator, WVDHHR

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

██████████,

Defendant,

v.

Action Number: 15-BOR-1369

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Movant.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from an Administrative Disqualification Hearing for ██████████ requested by the Movant on February 24, 2015. 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 and Federal Regulations at 7 CFR § 273.16. The hearing was convened on April 21, 2015.

The matter before the Hearing Officer arises from a request by the Department for a determination as to whether the Defendant has committed an Intentional Program Violation and should thus be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months

At the hearing, the Department appeared by Rebecca Pancake, Repayment Investigator. The Defendant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- M-1 Benefit Recovery Referral for case #1000223311
- M-2 Referral/Claim Comments for case #1000223311
- M-3 Supplemental Nutrition Assistance Program (SNAP) application, signed and dated by the Defendant on September 9, 2013
- M-4 WVDHHR application for Adult/Family Medicaid, received by Movant on September 9, 2013
- M-5 Case Comments in Defendant's case for the period of September 9, 2013 – November 1, 2013
- M-6 Attendance verification – ██████████ (also known as ██████████
██████████)

- M-7 Attendance verification – [REDACTED], [REDACTED]
- M-8 Verification of Defendant’s benefits from [REDACTED], [REDACTED]
[REDACTED]
- M-9 Verification that the Defendant has no prior Intentional Program Violations (IPVs) listed in the USDA Food and Nutrition Service Disqualified Recipient System database
- M-10 Advance Notice of Administrative Disqualification Hearing (ADH) Waiver and Waiver of ADH form
- M-11 Food Stamp (SNAP) Claim Determination for the period of September 2013 – November 2013
- M-12 WV Income Maintenance Manual §§ 1.2.E, 9.1.A.2.g, 20.2 and 20.6, and Code of Federal Regulations 7 CFR §273.16

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from the West Virginia Department of Health and Human Resources, hereinafter Movant, on February 24, 2015. Movant contends that the Defendant has committed an Intentional Program Violation (IPV) and is recommending that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, for a period of 12 months.
- 2) Notification of the April 21, 2015 hearing was mailed to the Defendant via United States Postal Service, Certified Restricted Delivery Mail, on March 12, 2015. Verification of receipt of notice is confirmed by Defendant’s signature on the return receipt dated March 25, 2015.
- 3) The hearing convened as scheduled at 10 a.m., and as of 10:15 a.m., the Defendant failed to appear. 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) Evidence proffered by the Movant reveals that the Defendant completed an application for Supplemental Nutrition Assistance Program (SNAP) and Medicaid benefits (M-3 and M-4, respectively) on September 9, 2013, and reported that her son, [REDACTED], was residing in her home as part of her Assistance Group (AG).
- 5) On or about November 13, 2013, Movant received information (M-6) from [REDACTED] - also known as [REDACTED] - that [REDACTED]

transferred to [REDACTED], on March 26, 2013. Information secured from [REDACTED] (M-7) further confirms that [REDACTED] was attending school in [REDACTED] in July 2013.

- 6) Documentation included in Exhibit M-5 reveals that the Defendant contacted her case worker on September 23, 2013 to inquire about Medicaid benefits, and subsequently telephoned Movant's office on October 18, 2013 to report she had moved to [REDACTED]
- 7) Movant indicated that it confirmed the Defendant was not receiving any benefits in the State of [REDACTED] during the period of September 2013 through November 2013 (M-8) and further confirmed that she has no previous Intentional Program Violations (IPVs). As a result, Movant contended the Defendant should be disqualified from the SNAP for a period of 12 months because she was untruthful about her residence and/or misrepresented the number of individuals in her SNAP Assistance Group (AG) at the time of her September 2013 application.
- 8) Movant provided Exhibit M-11 (Food Stamp Claim Determination) to demonstrate that because the Defendant provided untruthful information about her residence and/or the number of individuals in her AG, the Defendant received SNAP benefits to which she was not legally entitled.
- 9) The Defendant signed her SNAP application/review forms certifying that the information she provided was true and correct, and she signed the Rights and Responsibilities forms acknowledging the following:

I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not receive Food Stamp benefits as follows: First Offense – one year; Second Offense – two years; Third Offense – permanently. In addition, I will have to repay any benefits received for which I was not eligible.

By signing the Rights and Responsibilities form, the Defendant certified that she read, understood, and accepted the rights and responsibilities, and that all of the information provided was true and correct.

APPLICABLE POLICY

Policy found in §1.2(E) of the West Virginia Income Maintenance Manual provides 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.

West Virginia Income Maintenance Manual §10.4.C. contains policy relating to income and computation of SNAP benefits. It also states - to determine the coupon allotment, find the countable income and the number (of persons) in the benefit group.

West Virginia Income Maintenance Manual §20.2 provides that when an AG (assistance group) has been issued more SNAP than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the entitlement the assistance group received and the entitlement the assistance group should have received.

West Virginia Common Chapters Manual §740.11.D and the Code of Federal Regulations 7 CFR Section 273.16 establish that an individual making a false or misleading statement, or misrepresenting, concealing or withholding facts has committed an Intentional Program Violation (IPV).

West Virginia Income Maintenance Manual §20.2.C.2 requires that once an IPV has been established, a disqualification period must be imposed on the AG member(s) who committed the violation.

West Virginia Income Maintenance Manual §9.1 sets forth the penalties for individuals found guilty of an IPV as follows: First Offense, twelve (12)-month disqualification; Second Offense, twenty-four (24)-month disqualification; Third Offense, permanent disqualification.

DISCUSSION

The Defendant was notified of the Administrative Disqualification Hearing scheduled to convene on April 21, 2015, but failed to appear and contest Movant's evidence. While it is unclear if the Defendant lived in [REDACTED] at the time of her September 2013 application, evidence confirms that [REDACTED] could not have been a member of her SNAP AG in West Virginia, as evidence verifies he was attending school in [REDACTED].

CONCLUSIONS OF LAW

- 1) The regulations that govern the SNAP state that a program violation has occurred when an individual intentionally makes a false or misleading statement, or misrepresents, conceals or withholds facts relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits.
- 2) The evidence confirms the Defendant knowingly provided false and misleading information about her household composition (AG) in order to receive SNAP benefits to which she was not legally entitled. This clearly establishes intent.
- 3) The evidence is clear and convincing that the Defendant committed an Intentional Program Violation, as defined in the SNAP policy and regulations.

- 4) Pursuant to SNAP policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. Only the Defendant is subject to the disqualification. The disqualification for a first offense is 12 months.

DECISION

The Department's proposal to apply a 12-month SNAP disqualification **upheld**. The Defendant will be disqualified from participation in the SNAP for 12 months beginning June 1, 2015.

ENTERED this ____ day of May 2015.

Thomas E. Arnett
State Hearing Officer