



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
416 Adams St., Suite 307
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 27, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1647

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-1647

**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 March 25, 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 May 13, 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. Appearing as a witness for the Department was ██████████, Defendant's uncle. The Defendant failed to appear. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- M-1 Benefit Recovery Referral dated August 20, 2014
- M-2 Verification of checking account at ██████████ (██████████)
- M-3 Supplemental Nutrition Assistance Program (SNAP) Application/Review and Rights and Responsibilities – signed by the Defendant on March 11, 2014
- M-4 WV WORKS Application Form – Combined Application & Review Form and Rights and Responsibilities Form – signed by the Defendant on May 6, 2014
- M-5 Food Stamp (SNAP) Claim Determination Form, accompanied by Food Stamp Claim Calculation Sheets and SNAP Issuance History/Disbursement

- M-6 Case Comments from SNAP Review completed on 3/17/14 and WV WORKS application completed on 5/6/14
- M-7 MAGI Single Streamlined Application for Adult Medicaid Coverage, completed and signed by Donald Sell on 11/25/13
- M-8 WVDHHR Supplement to Application for Health Coverage, completed and signed by [REDACTED] on 11/25/13
- M-9 WVDHHR Pre-Admission Screening Form created on 11/19/13 for [REDACTED]
- M-10 Case Comments in the case of [REDACTED] – Case #0006519709 – dated 1/17/14 and 2/12/14
- M-11 Witness Statements from [REDACTED], brother of [REDACTED], and [REDACTED] daughter of [REDACTED]
- M-12 Advance Notice of Administrative Disqualification Hearing Waiver & Waiver of Administrative Disqualification Hearing – Hearing requested by Defendant by her signature dated 3/12/15
- M-13 WV Income Maintenance Manual §§1.2.E, 10.3.U, 20.2 and 20.6

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 March 25, 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 May 13, 2015 hearing was mailed to the Defendant via the United States Postal Service First Class Mail on April 1, 2015, as the Defendant is a current recipient of public assistance benefits and resides at a confirmed address.
- 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) [REDACTED], Defendant's father, was residing in her home until he was hospitalized and placed in nursing facility care in November 2013 (M-7, M-8, M-9 and M-10). Because Mr. [REDACTED] was receiving medical services through the Veteran's Administration, he did not have any costs associated with his care.

- 5) The Defendant was listed on her father's checking account, and beginning in December 2013, she began withdrawing all of the money out of her father's account every month (M-2). Because the money the Defendant withdrew every month did not exceed the income limit for her Supplemental Nutrition Assistance Program (SNAP) benefit assistance group (AG), she was not required to report the income until her next review.
- 6) The Defendant completed a SNAP review on March 11, 2014 (M-3) and an application for WV WORKS (M-4) on May 6, 2014. Movant noted that the Defendant did not report being a member on her father's checking account, or that she had access to his monthly income (M-6).
- 7) ██████████, Defendant's uncle (brother of ██████████), testified that the Defendant was charged with taking care of her father, but when he was transferred to a nursing facility in ██████████ he took over as power of attorney to assist his brother with qualifying for Medicaid. Mr. ██████████ reported that he had to account for his brother's money for the last five (5) years to qualify financially, and that is when he realized the Defendant had been spending her father's money. Mr. ██████████ testified that the Defendant exhausted the full amount of her father's checking account monthly, and that he had difficulty changing the account to include only him and his brother because the account had a negative balance.
- 8) Exhibit M-5 (Food Stamp Claim Determination) demonstrates that because the Defendant withheld information about being a member of her father's checking account and accessing his monthly income (verified in Exhibit M-2), the Defendant's AG received \$2,258 in SNAP benefits during the period of April 2014 through July 2014, to which it was not legally entitled. If Mr. ██████████ has not been in a nursing facility, the money would have been intended for him and used by him. However, the evidence demonstrates that the money was withdrawn while Mr. ██████████ was neither home, nor available to withdraw funds, and the Defendant used the income for her own purposes.
- 9) The Defendant signed her SNAP and WV WORKS application/review forms and the Rights and Responsibilities forms certifying that the information she provided was true and correct, and acknowledged 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 application/review and Rights and Responsibilities forms, 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 §10.3.U states that the portion of a deposit into a bank account intended for the use of the AG is counted - including money belonging to someone other than a member of the AG - as unearned income.

According to the West Virginia Income Maintenance Manual, §2.2.B, all SNAP AGs must report changes related to eligibility and benefit amount at application and redetermination.

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

Pursuant to SNAP regulations, the portion of a deposit into a bank account intended for the use of the AG is counted - including money belonging to someone other than a member of the AG - as unearned income. The evidence clearly demonstrates that the Defendant withheld information about being a member on her father's checking account and having access to and withdrawing his monthly deposits. The evidence is clear and convincing that the Defendant intentionally

withheld household income information - on no fewer than two (2) occasions – to receive SNAP benefits to which her AG was not legally entitled.

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 income in order to receive SNAP benefits to which her AG 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 is **upheld**. The Defendant will be disqualified from participation in the SNAP for 12 months beginning July 1, 2015.

ENTERED this ____ day of May 2015.

Thomas E. Arnett
State Hearing Officer