



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

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

August 3, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1997

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: Melissa Barr, CI, WVDHHR

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

██████████,

Defendant,

v.

Action Number: 15-BOR-1997

**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 May 7, 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 July 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 Melissa Barr, Criminal Investigator. The Defendant failed to appear. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Advance Notice of Administrative Disqualification Hearing Waiver dated 4/20/15
- D-2 7 CFR §273.16 Code of Federal Regulations
- D-3 Combined Application and Review Form (CAF) and Rights and Responsibilities dated 12/2/08
- D-4 Combined Application and Review Form (CAF) and Rights and Responsibilities dated 6/1/09
- D-5 Verification of Employment Income from Wendy's Eastern Management Group, Inc. - for the period of September 2008 - October 2009
- D-6 WV Income Maintenance Manual §1.2.E
- D-7 WV Income Maintenance Manual §2.2.B

- D-8 WV Income Maintenance Manual §2.2B.4
- D-9 WV Income Maintenance Manual §20.2
- D-10 WV Income Maintenance Manual §9.1.h
- D-11 Electronic Disqualified Recipient System (eDRS), retrieved from https://www.edrsng.fns.usda.gov/Query/Query_Main.aspx, on 4/20/15

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 May 7, 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 July 21, 2015 hearing was mailed to the Defendant on June 1, 2015, via First Class U.S. Mail, as the Defendant is a current recipient of public assistance benefits and resides at a confirmed address.
- 3) The hearing convened as scheduled at 11 a.m., and as of 11:15 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 the West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 740.20, the hearing was conducted without the Defendant in attendance.
- 4) Movant proffered evidence to indicate that the Defendant completed a SNAP application/review (D-3) on December 2, 2008 and reported she did not have any income. Defendant completed another SNAP application/review (D-4) on June 1, 2009, and again indicated that she did not have any household income.
- 5) Movant's Exhibit D-5, however, verifies the Defendant was employed by Wendy's Eastern Management Group, Inc., beginning September 1, 2008, and received employment earnings in the amount of \$6,597.06 during the period of January 2009 through October 2009.
- 6) Movant contended that by withholding information about household income, the Defendant received SNAP benefits to which she was not legally entitled. Movant noted, however, that the Defendant has made full restitution of SNAP benefits received fraudulently by a court order. The court, however, did not impose a SNAP penalty.

- 7) 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.

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 §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 AG received and the entitlement the AG should have received. An IPV can be established by an Administrative Disqualification Hearing (ADH) decision or by a court decision. If the court fails to impose a disqualification period, the Department imposes the appropriate penalty as indicated in §9.1.A.2.g

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 evidence is clear and convincing that the Defendant intentionally withheld household employment/wage information - on no fewer than two (2) occasions – to receive SNAP benefits to which she 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 withheld information about her household income 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

Intentionally making a false or misleading statement or misrepresenting facts to secure SNAP benefits constitutes a clear violation of the regulations. The Agency's proposal to apply a SNAP disqualification is **upheld**. The disqualification period will begin effective September 1, 2015.

ENTERED this ____ day of August 2015.

Thomas E. Arnett
State Hearing Officer