



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

August 31, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2009

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Cassandra Burns, Repayment Investigator

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

████████████████████,

Defendant,

v.

Action Number: 15-BOR-2009

**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 8, 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 Section 273.16. The hearing was convened on August 19, 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 thus should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for twelve months.

At the hearing, the Department appeared by Cassandra Burns, Repayment Investigator. The Defendant did not appear. The participant was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Code of Federal Regulations §273.16
- M-2 Form ES-FS-5, Food Stamp (SNAP) Claim Determination
- M-3 Combined Application Form (CAF) and Rights and Responsibility form, signed and dated by the Defendant on July 3, 2013
- M-4 SNAP Review Form, signed by the Defendant on July 14, 2014
- M-5 Case recordings from Defendant's SNAP record, from July 3, 2013, through April 24, 2015
- M-6 Series of WV DHHR e-mails, dated March 4, April 23 and April 24, 2015
- M-7 West Virginia Income Maintenance Manual (WV IMM) Chapter 1, §1.2.E

- M-8 WV IMM Chapter 20, §20.2
- M-9 WV IMM Chapter 20, §20.6
- M-10 Copy of IG-IFM-ADH-waiver, Waiver of Administrative Disqualification Hearing form, and IG-IFM-ADH-Ltr, Notice of Intent to Disqualify form, sent to the Defendant on April 27, 2015

Defendant's Exhibits

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence during 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) The Department's representative contended the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for one year because she intentionally withheld the fact that three of her children, members of her SNAP assistance group (AG), were in foster care and juvenile detention facilities from July 2013 through May 2015. The Department's representative argued that because the Defendant reported these children lived with her when they did not, her SNAP AG received \$5519 in benefits to which it was not entitled.
- 2) On July 3, 2013, the Defendant applied for SNAP benefits at the WV DHHR, [REDACTED] office (Exhibit D-3). At this application, she reported her household consisted of herself and four children.
- 3) The Defendant completed an eligibility review on July 14, 2014 (Exhibit D-4), again reporting that her AG and household consisted of herself and four children.
- 4) One of the Defendant's children had been placed in a foster care facility on June 25, 2013. He ran away from this facility on September 13, 2013, was caught and placed in a juvenile detention facility on June 28, 2014, where he remained until July 2015.
- 5) A second of the Defendant's children had been placed in a foster care facility on June 7, 2013, where he remained until April 16, 2014. He returned home on April 16, 2014, but went to a juvenile detention facility in October 2014. He remained there until July 2015.
- 6) A third child was placed in a foster care facility on May 16, 2014. He ran away from the facility on August 29, 2014. He has not returned home.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) Chapter 1.2.E states that it is the client's responsibility to provide information about his/her circumstances so the worker is able to make a correct decision about his/her eligibility.

WV IMM Chapter 20.2 states that when an AG has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.

WV IMM Chapter 20.2.C.2 provides that once an IPV (Intentional Program Violation) is established, a disqualification penalty is imposed on the AG members who committed the IPV. The penalties are as follows: First Offense – one year disqualification; Second Offense – two years disqualification; Third Offense – permanent disqualification.

WV IMM Chapter 20.6 states, "A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false . . . It is not essential that an affirmative representation be made. Misrepresentation may also be the suppression of what is true, as well as the representation of what is false."

Pursuant to the Code of Federal Regulations 7 CFR Section 273.16, an Intentional Program Violation shall consist of a SNAP recipient 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 Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system access device.

DISCUSSION

The Department's representative provided copies of two review and/or redetermination forms and copies of SNAP case recordings from the Defendant's case record indicating she reported her SNAP AG consisted of herself and her four children. A case recording dated August 19, 2014 (Exhibit D-5), indicates she reported one child (the child mentioned in Finding of Fact #4, above) being out of her home on that date, but not for the full amount of time he was not living in her home.

The evidence against the Defendant is circumstantial in that the only evidence indicating the Defendant's children were not living with her is an e-mail exchange between a social worker at the WV DHHR, [REDACTED] office and the Department's representative, the repayment investigator who investigated the report that the children were not in the home. However, in the absence of rebuttal evidence or testimony from the Defendant who did not attend the hearing, the Department has provided clear and convincing evidence that three of the Defendant's four children lived in foster care and juvenile detention facilities from July 2013 through May 2015,

while the Defendant continued to obtain benefits for them as members of her SNAP assistance group.

CONCLUSIONS OF LAW

- 1) Pursuant to the Code of Federal Regulations and Common Chapters Manual, the Defendant made a false or misleading statement, or misrepresented, concealed or withheld facts, in order to receive SNAP benefits to which she was not legally entitled.
- 2) The Department presented clear and convincing evidence that Defendant committed an Intentional Program Violation by not reporting three of her four children did not live in her household during the period of July 2013 through May 2015, in violation of WV IMM §1.2.E. The Department must impose a disqualification penalty.
- 3) The disqualification for a first offense IPV is one year.

DECISION

It is the ruling of the Hearing Officer that the Defendant committed an Intentional Program Violation. She will be disqualified from participating in SNAP for one year, beginning October 1, 2015.

ENTERED this 31st Day of August 2015.

**Stephen M. Baisden
State Hearing Officer**