



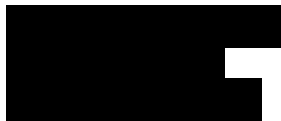
STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin  
Governor

BOARD OF REVIEW  
203 East Third Avenue  
Williamson, WV 25661

Karen L. Bowling  
Cabinet Secretary

September 21, 2015



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-2339

Dear Mr. [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: Rebecca Pancake, Repayment Investigator

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

████████████████████,

**Defendant,**

v.

**Action Number: 15-BOR-2339**

**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 June 22, 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 September 9, 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 Rebecca Pancake, Repayment Investigator. The Defendant did not appear. The participant was sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- M-1 Benefit Recovery Referral (BVRF) screen print from Defendant's SNAP case record
- M-2 WV DHHR Application for Benefits, dated December 29, 2014
- M-3 E-mail exchange between Repayment Investigator from WV DHHR and Fraud Investigator from ██████████ Department of Social Services, including print-out of Defendant's SNAP issuance history from state of ██████████
- M-4 Form ES-FS-5, Food Stamp (SNAP) Claim Determination
- M-5 Case recordings from Defendant's SNAP record, from January 9, 2015, through May 11, 2015

- M-6 Copy of IG-IFM-ADH-waiver, Waiver of Administrative Disqualification Hearing form, sent to Defendant on May 14, 2015
- M-7 West Virginia Income Maintenance Manual (WV IMM) Chapter 1, §1.2.E, Chapter 8, §8.2.A.1, Chapter 20, §20.2, Chapter 20, §20.6 and Code of Federal Regulations §273.16

**Defendant's Exhibits**

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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 he intentionally withheld the fact that he received SNAP benefits from the state of [REDACTED] at the same time he received SNAP in West Virginia. The Department's representative argued that because the Defendant did not discontinue his [REDACTED] SNAP case before applying in West Virginia, his SNAP assistance group (AG) received \$400 in benefits to which it was not entitled.
- 2) The Defendant applied for SNAP benefits in West Virginia on December 29, 2015 (Exhibit M-2). On the first page of his SNAP application form, a question asks, "Have you or anyone in your household received or do you expect to receive SNAP benefits from any other state this month?" The Defendant answered "no" to this question.
- 3) The Defendant received SNAP benefits in [REDACTED] from March 2014 through February 2015 (Exhibit M-3), according to a Fraud Investigator from the [REDACTED] Department of Social Services.
- 4) The Defendant received SNAP benefits in West Virginia beginning in December 2014. According to documentation provided by the Department's representative, he received them in West Virginia at least through May 2015 (Exhibit M-4).

**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 8.2.A.1 states that an individual is eligible to receive SNAP benefits in West Virginia for the month following the month he or she last received benefits in his or her former state of residence.

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.A 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 a print-out from the state of [REDACTED] indicating the Defendant received SNAP benefits there for December 2014, January 2015 and February 2015. The Department’s representative provided documentation from the Defendant’s case record indicating he applied for SNAP benefit in West Virginia in December 2014, reporting on his application that he did not receive SNAP benefits that month from another state. The Department’s representative provided documentation that the Defendant received SNAP benefits in West Virginia for the same three months.

The Department provided clear and convincing evidence that the Defendant received SNAP benefits from both [REDACTED] and West Virginia from December 2014 through February 2015. The Department also provided clear and convincing evidence that the Defendant did not report the fact that he received SNAP in another state on his December 2014 SNAP application form.

### **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 he was not legally entitled.

- 2) The Department presented clear and convincing evidence that the Defendant committed an Intentional Program Violation by not reporting he received SNAP benefits in the state of Virginia from December 2014 through February 2015, in violation of WV IMM §§1.2.E and 8.2.A.1. 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. He will be disqualified from participating in SNAP for one year, beginning November 1, 2015.

**ENTERED this 21<sup>st</sup> Day of September 2015.**

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**Stephen M. Baisden  
State Hearing Officer**