

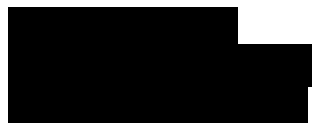


STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
416 Adams St., Suite 307
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

October 19, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-2568

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,

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-2568

**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 July 16, 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 October 14, 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 dated 5/27/14
- M-2 Combined Application & Review Form and Rights and Responsibilities – signed by the Defendant on 11/1/13
- M-3 Application for Low Income Energy Assistance Program (LIEAP) – signed by the Defendant on 1/16/14
- M-4 Case Comments in Defendant's electronic case file made by ██████████ (case worker) for the period of 11/1/13 through 11/16/14
- M-5 Employment income verification for ██████████ from ██████████, ██████████ (employment began May 2013)

- M-6 Employee Wage Data Report for [REDACTED] verifying employment income from [REDACTED]
- M-7 SNAP Claim Determination Sheet, Food Stamp monthly calculation sheets and SNAP issuance History for the period of December 2013 through May 2014
- M-8 Advance Notice of Administrative Disqualification Hearing Waiver & Waiver of Administrative Disqualification Hearing – dated 7/2/15
- M-9 WV Income Maintenance Manual §§1.2.E, 20.2, 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 July 16, 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) Defendant completed a combined WV WORKS, SNAP, and Medicaid review on November 1, 2013 (M-2) and reported an Assistance Group (AG) of three (3) individuals – himself and his two sons, [REDACTED]. Defendant reported that the only monthly household income was his WV WORKS cash assistance benefits (\$226). Defendant reported the same information on a local office pre-interview form, which also bares his signature dated November 1, 2013. Case Comments recorded by Movant’s case worker on November 1, 2013 (M-4) further indicate that the Defendant verbally reported during his interview that his AG had no earned income.
- 3) Defendant completed an application for Low Income Energy Assistance Program (LIEAP) benefits on January 16, 2014, and again reported an AG of three (3) individuals with only \$226 per month in cash assistance “welfare” benefits.
- 4) On May 5, 2014, Defendant completed a Combined WV WORKS and SNAP review and again reported that his AG had zero monthly employment income. However, according to Case Comments (M-4) recorded by case worker [REDACTED], on May 5, 2014, employment alerts in the Employee Wage Data exchange indicated that [REDACTED] had employment income. According to Ms. [REDACTED] comments, Defendant responded by indicating that he did not believe [REDACTED] was still employed, but he would check with him. Case Comments recorded on May 6, 2014, confirm that the Defendant returned to Movant’s office and reported [REDACTED] was currently employed.

- 5) Movant's Exhibit M-5 confirms that [REDACTED] began employment with [REDACTED], in May 2013, and Exhibit M-6 confirms that [REDACTED] had employment income with this employer from the 2nd quarter of 2013 through the 4th quarter of 2014.
- 6) Exhibit M-7 (Food Stamp Claim Determination) demonstrates that because the Defendant withheld information about household employment income, the Defendant received \$2,267 in SNAP benefits during the period of December 2013 through May 2014, to which he was not legally entitled. Movant noted that the unreported employment income (M-5 and M-6) was used to calculate the corrected monthly SNAP benefit amount for the period of overpayment, and that the repayment period did not begin until December 2013, as the income should have been reported at the November 1, 2013 application/review. It was agreed during the hearing that the decision would address the amount of overpayment.
- 7) Defendant purported that he has always told Ms. [REDACTED] everything, and that he did not withhold information about his son's employment income.
- 8) The Defendant signed his SNAP and WV WORKS application/review form and the Rights and Responsibilities forms certifying that the information he 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 he 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.

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

The evidence clearly demonstrates that the Defendant withheld information about household employment income received by a member in his AG. While the Defendant alleged that he was always truthful when providing information to his case worker, the documentation completed by the Defendant does not include any information regarding household employment income, and when questioned, he indicated that he was unsure whether his son was still employed – which indicates he was aware of his son’s employment. 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 his 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 his household income in order to receive SNAP benefits to which his 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.
- 5) Movant is authorized by the regulations to pursue repayment of SNAP benefits, and the amount of overpaid SNAP benefits proposed by Movant in the amount of \$2,267 is correct.

DECISION

The Department's proposal to apply a 12-month SNAP disqualification and pursue repayment of \$2,267 in SNAP benefits is **upheld**. The Defendant will be disqualified from participation in the SNAP for 12 months beginning December 1, 2015.

ENTERED this ____ day of October 2015.

**Thomas E. Arnett
State Hearing Officer**