



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

September 28, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-2576

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: Wanda Morgan, RI, WVDHHR

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

██████████,

Defendant,

v.

Action Number: 15-BOR-2576

**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 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 should thus be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months.

At the hearing, the Department appeared by Repayment Investigator (RI) Wanda Morgan. The Defendant failed to appear. All witnesses were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Supplemental Nutrition Assistance Program (SNAP) – 6 or 12 month contact form – signed by Defendant on 9/26/14
- M-2 Employee Wage Data verifying Defendant's employment at ██████████ ██████████, in the 3rd and 4th quarter of 2014
- M-3 Verification of Employment and Earnings for Defendant showing a hire date of 9/17/14
- M-4 Case Comments documented in Defendant's electronic case file (SNAP case #7018889073) for the period of 4/28/14 – 8/11/15

- M-5 SNAP allotment determination sheets showing the calculations used to demonstrate monthly overpayments during the period of October 2014 through February 2015
- M-6 Food Stamp (SNAP) Claim Determination showing the amount of overpaid SNAP benefits during the period October 2014 through February 2015 – with supporting calculations
- M-7 Advance Notice of Administrative Disqualification Hearing Waiver dated 5/26/15 and Waiver of Administrative Disqualification Hearing
- M-8 WV Income Maintenance Manual §§1.2.E, 20.2 and 20.6, and the 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) Notification of the September 9, 2015 hearing was mailed to the Defendant on August 4, 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 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 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's Exhibit M-1, reveals that the Defendant completed a SNAP review on September 26, 2014 and reported zero (\$0) earned income.
- 5) Movant's Exhibits M-3 and M-4, however, verify the Defendant was hired at [REDACTED] on September 17, 2014, and received her first pay on September 26, 2015 – the same day the Defendant signed the SNAP review form and indicated she had zero (\$0) employment income.

- 6) Movant's Exhibit M-4 includes a documented phone conversation with the Defendant on October 14, 2015, wherein the Defendant telephoned Movant's Customer Service Center (CSC) to check on her submitted review and advised Movant's case worker that she also wanted to make certain to report that she had registered with the Bureau for Employment Programs (BEP). According to this documentation, employment earnings were not reported.

Exhibit M-4 further notes that an additional benefit review was submitted by the Defendant on December 9, 2014, and it was documented by the case worker that "there are no changes reported per client and review has been confirmed."

In addition, Exhibit M-4 includes documentation that indicates the Movant received a new hire alert on December 18, 2014 and benefits were suspended pending verification. The Defendant subsequently telephoned Movant's office on January 9, 2015, and reported that she had been let go by her employer after working two (2) days when a criminal background check revealed she had a misdemeanor theft charge. SNAP benefits were restored based on zero (\$0) monthly income as reported by the Defendant.

On February 8, 2015 (M-4), Movant confirmed Defendant had been employed since September 2014, and during a telephone conversation with the Defendant on February 11, 2015, Defendant again denied she was working.

On February 12, 2015, Defendant again spoke with her case worker on the phone and acknowledged that she had worked at [REDACTED], but reported she had to quit after two (2) days due to transportation problems. Upon being advised that Movant had verification of Defendant's weekly pay from September 21, 2014 through January 15, 2015, the phone call was disconnected. Upon trying to call the Defendant again, the case worker indicated that she received Defendant's voice mail.

- 6) Movant contended that by withholding information about her household income during her reviews, and when she spoke directly with her worker, the Defendant received \$890 in SNAP benefits – during the period of October 2014 through February 2015 - to which she was not legally entitled.
- 7) The Defendant signed her SNAP review form (M-1) on September 26, 2014, certifying that the statements on this form are true and correct to the best of my knowledge. I understand that the information I provide on this form may result in a reduction or termination of my benefits. In addition, page one (1) of this documents reads, in pertinent part:

If you intentionally give false information or withhold information, you will have to pay back your SNAP benefits and may be disqualified from SNAP for 12 months, 24 months, or permanently. In addition, you may be found guilty of fraud. Punishment upon conviction may be a fine up to \$10,000 and or sentence of 10 years in a state correctional facility.

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 – when she completed her reviews and spoke directly with her case workers on the phone – to receive SNAP benefits to which she was not legally entitled. This is confirmed by the documents completed and signed by the Defendant, as well as her documented responses during her telephone interviews.

CONCLUSIONS OF LAW

- 1) The regulations that govern SNAP indicate 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 November 1, 2015.

ENTERED this ____ day of September 2015.

Thomas E. Arnett
State Hearing Officer