



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

February 19, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 14-BOR-3608

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: Claimant'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: 14-BOR-3608**

**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 November 6, 2014. 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 January 27, 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 SNAP Review Form, signed and dated by Defendant on May 3, 2013
- M-4 SNAP Review Form, signed and dated by Defendant on October 10, 2013
- M-5 Case recordings from Defendant's SNAP record, from May 3, 2013, through May 22, 2014
- M-6 Earnings verification letter from Department to employer of Defendant's girlfriend, dated April 24, 2014, completed and returned by employer on May 1, 2014
- 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 Defendant on July 23, 2014

### **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 contends the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for one year because he intentionally withheld the fact that his girlfriend, a member of his SNAP assistance group (AG), was working and receiving earned income from May 2013 through April 2014. The Department's representative argued that because the girlfriend's income was not reported during SNAP eligibility reviews, his SNAP AG received \$3841 in benefits to which it was not entitled.
- 2) On May 3, 2013, the Defendant submitted an application for SNAP (Exhibit M-3). On it, the Defendant entered that his SNAP AG and household consisted of himself and his girlfriend, and that neither he nor his girlfriend received any earned or unearned income. On October 10, 2013, the Defendant submitted a SNAP redetermination/review form (Exhibit M-4), again reporting that his household and SNAP AG consisted of himself and his girlfriend, and that neither of them received earned or unearned income.
- 3) The Department's representative submitted as evidence case recordings made in the Defendant's SNAP case from May 3, 2013 to May 22, 2014 (Exhibit M-5). According to these recordings, on April 24, 2014, a worker at the WV DHHR, [REDACTED] office, recorded the following in part, "DXRL shows income in Dec 2013 – pending for income for [Defendant's girlfriend]." "DXRL" refers to an on-line data exchange service available to eligibility workers, wherein social security numbers of SNAP AG members are checked with other federal and state agencies such as the Internal Revenue Service, Workforce WV and the WV Department of Corrections.
- 4) On April 24, 2014, the Department's representative sent a letter and attached verification forms (Exhibit M-6) to the employer listed in the DXRL match, asking the employer to verify the employment starting date and pay amounts for the Defendant's girlfriend. On May 1, 2014, the employer returned the forms to the Department's representative. These forms (Exhibit M-6, pages 2 – 3) report that the Defendant's girlfriend began working for the employer on April 15, 2013, had been paid weekly for an average of \$439 per week, and was still working at the time the forms were returned.

## **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 Defendant reported that there was no earned or unearned income in his SNAP assistance group on a SNAP application from May 2013 and a SNAP review in October 2013. The Department provided clear and convincing evidence that the Defendant's girlfriend, a member of his SNAP AG, was working and receiving earned income throughout the period of May 2013 through April 2014.

## **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 Defendant committed an Intentional Program Violation by not reporting that his girlfriend worked and received earned income, 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. He will be disqualified from participating in SNAP for one year, beginning in April 2015.

**ENTERED this 19<sup>th</sup> Day of February 2015.**

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**Stephen M. Baisden  
State Hearing Officer**