



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

May 21, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 14-BOR-3610

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: 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-3610

**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 May 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 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 Attendance Verification form from ██████████, ██████████ WV, dated September 8, 2015
- M-4 Driver History Inquiry – Driver ID from WV Department of Motor Vehicles Computer System
- M-5 Vehicle System Master Inquiry – Vehicle Information from WV Department of Motor Vehicles Computer System
- M-6 SNAP Review Form, signed by Defendant on April 24, 2014

- M-7 Case recordings from Defendant's SNAP record, from April 7 through October 9, 2014
- M-8 West Virginia Income Maintenance Manual (WV IMM) Chapter 1, §1.2.E
- M-9 WV IMM Chapter 20, §20.2
- M-10 WV IMM Chapter 20, §20.6
- M-11 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 October 8, 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.

* This administrative disqualification hearing originally was held *in absentia* on March 17, 2015. Several days after the hearing, the Defendant called the Board of Review to report that she did not receive notice of the hearing, citing difficulties with receiving mail at her home. She requested the hearing be rescheduled and to be informed of the new date and time via the cell phone number she provided. The Board of Review rescheduled the hearing for May 14, 2015, sending the scheduling order via first-class mail, in addition to making at least six attempts to contact the Defendant by telephone as requested. At each attempt, the Board of Review received a pre-recorded message from the cell service provider stating, "The person you are trying to reach is not accepting calls at this time. Please try your call again later." The provider offered no voice mail message option. At the May 14, 2015, hearing, the Department's representative made a motion to accept the hearing evidence and recording from the March 17, 2015, hearing as the true record of this proceeding. As the Department's representative had no new evidence or testimony to offer, the Board of Review upheld her motion.

FINDINGS OF FACT

- 1) The Department alleged the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for one year because she intentionally withheld the fact that her sons, members of her SNAP assistance group (AG), resided with their biological father from May 2014 through October 2014. Because the Defendant reported her sons lived with her when they did not, her SNAP AG received \$975 in benefits to which it was not entitled.
- 2) On April 7, 2014, the Defendant called the WV DHHR's Customer Service Center to report that one of her sons, who had been residing with his father, had moved back to her home. On June 30, 2014, the Defendant completed a SNAP benefit review. During this review, she reported that another son had moved into her home. She signed a review form which included both children in her SNAP assistance group (Exhibit M-6). The Department workers at the [REDACTED] office added the two children to the Defendant's SNAP case, and documented these two events in case recordings included as a part of her SNAP case record (Exhibit M-7).

- 3) On July 22, 2014, the Investigations and Fraud Management (IFM) unit of the WV DHHR received a referral indicating that these two children did not live with the Defendant.
- 4) The Department's representative obtained a school attendance verification form from [REDACTED] [REDACTED] WV (Exhibit M-3). The form indicated both children lived in [REDACTED] with their father. The Department's representative also obtained information from the WV Department of Motor Vehicles indicating that the older of the two children had a WV Driver's License, and the physical address for this license holder was identical to the address listed on the school attendance verification form.

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 her two sons lived with her, and had them added to her SNAP assistance group in April and June, 2014. On June 30, 2014, she signed a SNAP review form to the effect that they lived with her. The Department provided clear and convincing evidence that

the Defendant made a false statement reporting her two sons lived with her, when in fact they lived with their father from April through October 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 she legally was not entitled.
- 2) The Department presented clear and convincing evidence that Defendant committed an Intentional Program Violation by reporting falsely that her sons lived in her household during the period of April through October, 2014, 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 July 1, 2015.

ENTERED this 21st Day of May 2015.

**Stephen M. Baisden
State Hearing Officer**