



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 20, 2015



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 14-BOR-3614

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-3614**

**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 Final Order from the Family Court of ██████████, dated July 15, 2014
- M-4 SNAP Review Form, signed by Defendant
- M-5 Case recordings from Defendant's SNAP record, from July 30, 2013, through June 24, 2014
- M-6 West Virginia Income Maintenance Manual (WV IMM) Chapter 1, §1.2.E
- M-7 WV IMM Chapter 20, §20.2
- M-8 WV IMM Chapter 20, §20.6

- M-9 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.

**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 she intentionally withheld the fact that her daughter, a member of her SNAP assistance group (AG), resided with the child's biological father from July 2013 through June 2014. The Department's representative argued that because the Defendant reported her daughter lived with her when she did not, her SNAP AG received \$1777 in benefits to which it was not entitled.
- 2) In December 2013, the Defendant submitted a review/redetermination form for SNAP (Exhibit M-4). On it, the Defendant entered that her SNAP AG and household consisted of herself and her daughter. On December 26, 2013, a worker at the [REDACTED] office of the WV DHHR entered a case recording in the Defendant's case record (Exhibit M-5), indicating she spoke with the Defendant by telephone and completed her telephone interview as part of her SNAP review. The worker recorded that the Defendant reported two persons in her SNAP AG, herself and her daughter.
- 3) The case recordings from the Defendant's SNAP record (Exhibit M-5) indicate that the Defendant had completed a SNAP, child Medicaid and School Clothing Allowance application on July 30, 2013, wherein she reported that her household consisted of herself and her daughter.
- 4) The Department's representative submitted as evidence a Final Order from the Family Court of [REDACTED], dated July 15, 2014 (Exhibit M-3), rendering a decision upon a Motion to Modify Parenting and Child Support from the biological father of the Defendant's daughter. The final order states as follows in pertinent part:

[Defendant's daughter] stated that she has been residing with her father and paternal grandmother for approximately two years. She stated that the last court order (2010) it was ordered that she was to primarily reside with her mother. She was provided with time to visit with her father . . . She indicated that mother lost her home due to money issues and she went to live with Dad.

Father indicated that his daughter resided with him . . . and his mother for essentially two years and has had limited contact with mother due to her ongoing addiction issues and instability . . . Father reported . . . that the previous Court order placed [Defendant's daughter] with her mother, but that one day [Defendant's daughter] called and said that she had no home, no place to go and needed to reside with him . . . This occurred approximately 2 years ago and the child has been residing with him since.

### **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 SNAP assistance group consisted of herself and her daughter on a SNAP application from July 2013 and a SNAP review in December 2013. The Department provided clear and convincing evidence that the Defendant's daughter, a member of her SNAP AG, lived with her father from July 2013 through June 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 her daughter did not live in her household during the period of July 30, 2013 through June 30, 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 April 1, 2015.

**ENTERED this 20<sup>th</sup> Day of February 2015.**

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**Stephen M. Baisden  
State Hearing Officer**