



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

March 6, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 14-BOR-3782

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: Brian Shreve, Repayment Investigator

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

██████████,

Defendant,

v.

Action Number: 14-BOR-3782

**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 December 3, 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 February 10, 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 Brian Shreve, 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 Benefit Recovery Referral, dated August 19, 2014
- M-3 Form ES-FS-5, Food Stamp (SNAP) Claim Determination
- M-4 Case recordings from Defendant's SNAP record, from August 21 through 26, 2014
- M-5 Final Order from the Circuit Court of ██████████, dated August 20, 2013
- M-6 Combined Application Form (CAF) and Rights and Responsibilities form, signed by Defendant on April 29, 2014

- M-7 Case recordings from Defendant's SNAP record, dated April 29, 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 September 10, 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), had been legally adopted by her mother and step-father. The Department's representative argued that the Defendant's daughter did not live her from October 1, 2013 through September 30, 2014, thus her SNAP AG received \$1809 in benefits to which it was not entitled.
- 2) On April 29, 2014, the Defendant participated in a SNAP benefit review/redetermination. In doing so, she signed a Combined Application Form (CAF) and Rights and Responsibilities form (Exhibit M-4). On it, the Defendant entered that her SNAP AG and household consisted of herself and her daughter. She signed and dated both documents.
- 3) The Department's representative submitted as evidence a Final Order from the Circuit Court of [REDACTED], dated August 20, 2013 (Exhibit M-5), rendering a decision upon an Adoption Action. The final order states that the petitioners for the Adoption Action are the mother and step-father of the Defendant. The final order reads as follows in pertinent part:

[Defendant's daughter] resides with the petitioners and [Defendant's brother], a minor, at [REDACTED].

[Defendant's daughter] has lived in the petitioners' home continuously since birth, a period far in excess of six (6) months from the date of the *Petition* herein.

. . . the Court does ORDER . . . that the petition of [Defendant's step-father] and [Defendant's mother], his wife, to ADOPT the infant child is hereby GRANTED and said adoption is in the best interest of said infant child.

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 review/redetermination in April 2014. The Department provided clear and convincing evidence that the Defendant's daughter, a member of her SNAP AG, had been adopted by her mother and step-father in August 2013, and had lived with the Defendant's mother and step-father "continuously since birth" according to the Final Adoption Order (Exhibit M-5).

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 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 October 1, 2013 through September 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 6th Day of March 2015.

**Stephen M. Baisden
State Hearing Officer**