



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 13, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 14-BOR-3838

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-3838

**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 10, 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 September 30, 2014
- M-3 Form ES-FS-5, Food Stamp (SNAP) Claim Determination
- M-4 Case recordings from Defendant's SNAP record, from September 9 through 25, 2014
- M-5 Temporary Custody Order, dated January 12, 2011, and Final Divorce Order dated October 29, 2008, from the Family Court of ██████████
- M-6 Final Order Denying Modification of Parenting Plan, dated February 20, 2014, from the Family Court of ██████████

- M-7 SNAP Review/Redetermination form, signed by Defendant on March 3, 2013
- M-8 Case recordings from Defendant's SNAP record, from November 9, 2012, through December 18, 2013
- M-9 West Virginia Income Maintenance Manual (WV IMM) Chapter 1, §1.2.E
- M-10 WV IMM Chapter 20, §20.2
- M-11 WV IMM Chapter 20, §20.6
- M-12 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 29, 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 son, a member of her SNAP assistance group (AG), did not live in her household, from April 1, 2012 through October 31, 2014. Because the Defendant did not correctly report her household composition, her SNAP AG received \$2804 in benefits to which it was not entitled.
- 2) On March 3, 2013, the Defendant submitted a SNAP benefit review/redetermination form (Exhibit M-7). On it, the Defendant entered that her SNAP AG and household consisted of herself and her three children. The Department's representative pointed out that this was only one of many benefit reviews and applications she completed during the repayment period of April 2012 through October 2014, each time reporting herself and her three children in her household. The name of her oldest child on the application form corresponds to the name of the child listed in the court orders referenced below.
- 3) The Department's representative submitted as evidence a Final Divorce Order from the Family Court of [REDACTED], dated October 29, 2008 (Exhibit M-5, pages 2-7), granting a divorce between the Defendant and her ex-husband. The order states that the Defendant and her ex-husband would share custody of their son, the oldest of her three children. On January 11, 2012, the Family Court of [REDACTED], issued a temporary custody order (Exhibit M-5, page 1) granting custody of this child to the ex-husband.
- 4) On February 20, 2014, the Family Court of [REDACTED], issued a Final Order Denying Modification of Parenting Plan (Exhibit M-6). The final order lists the Defendant as the Petitioner and her ex-husband as the Respondent. It reads as follows in pertinent part:

The Respondent was granted primary custodial responsibility of [Defendant's oldest child] on January 12, 2011, based upon allegations of educational and dental neglect, pursuant to a petition for modification of the parenting plan.

[Defendant's oldest child] has thrived educationally and medically under the care of the Respondent since January 2011.

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 three children on a SNAP review/redetermination form from March 2013. The oldest of her three children is listed on court documents from the Family Court of [REDACTED], awarding legal custody of this child to the Defendant's ex-husband. These documents clearly indicate the Defendant's oldest child had been living with the Defendant's ex-husband since January 2011.

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 oldest son did not live in her household during the period of April 1, 2012 through October 31, 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 13th Day of March 2015.

**Stephen M. Baisden
State Hearing Officer**