



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
203 East Third Avenue  
Williamson, WV 25661

Jim Justice  
Governor

Bill J. Crouch  
Cabinet Secretary

May 23, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 17-BOR-1438

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: Appellant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Elizabeth Mullins, Repayment Investigator

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

██████████,

**Defendant,**

v.

**Action Number: 17-BOR-1438**

**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 March 9, 2017. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (WV DHHR) Common Chapters Manual and Federal Regulations at 7 CFR Section 273.16. The hearing was convened on April 13, 2017.

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 Elizabeth Mullins, Repayment Investigator. The Defendant appeared *pro se*. The participants were sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- M-1 Code of Federal Regulations 7 CFR Section 273.16
- M-2 Form IG-IFM-SNAP-CLAIM-DET, SNAP Claim Determination
- M-3 Telephone review forms, dated June 15, 2015, September 14, 2015, April 23, 2016 and June 13, 2016
- M-4 Form IG-IFM-WAGE-HISTORY, Wage History form completed by payroll clerk at ██████████, ██████████ WV
- M-5 West Virginia Income Maintenance Manual (WV IMM) Chapter 1, §1.2.E
- M-6 WV IMM Chapter 20, §20.2
- M-7 WV IMM Chapter 20, §20.6

## **Defendant's Exhibits**

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at 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 contended the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for one year because he failed to report certain earned income during SNAP reviews from August 2015 through July 2016.
- 2) The Defendant was a SNAP recipient in July 2015. He completed a telephone review for SNAP on June 26, 2015, wherein he reported he ended his employment at [REDACTED] a fast-food restaurant in the [REDACTED] WV, area and began working at [REDACTED], a pizza delivery restaurant (Exhibit D-3).
- 3) The Defendant was a student at the [REDACTED] in [REDACTED] WV. He began working for [REDACTED], [REDACTED] WV (herein "[REDACTED]"), on May 19, 2015 (Exhibit D-4), on a "casual" or as-needed basis. He did not report this income on his June 26, 2015, SNAP review or on subsequent reviews for SNAP and Medicaid from May 19, 2015 to June 13, 2016.
- 4) The Department's representative asserted that because the Defendant did not report his earnings from [REDACTED] from August 2015 to July 2016, his SNAP assistance group (AG) received \$1680 in SNAP benefits to which it was not entitled.

### **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 can 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 (IPV) claim. The claim is the difference between the allotment the client received and the allotment he should have received.

WV IMM Chapter 20, §20.2.C.2 provides that once an IPV 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 year disqualification; Third Offense – permanent disqualification.

WV IMM Chapter 20, §20.6.A reads as follows: “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 . . . [however] it is not essential that an affirmative representation be made. Misrepresentation may . . . 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 IPV 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 or access device.

### **DISCUSSION**

The Department’s representative provided evidence to support the Department’s assertion that the Defendant withheld employment information about himself on reviews from June 2015 to June 2016 (Exhibit D-3). These reviews report earned income from a pizza delivery restaurant and stipends the Defendant received as part of his financial aid package for his nursing school education. However, he did not report earnings he received from [REDACTED], [REDACTED] WV.

The Department’s representative submitted a document sent to [REDACTED], completed by a hospital administrative worker and returned to the Department on February 15, 2017 (Exhibit D-4). This document verified that the Defendant began working at the medical center on May 19, 2015, and was still working there when the form was completed.

The Defendant did not dispute that he worked at [REDACTED] beginning on May 19, 2015, nor did he dispute that he did not report this employment on benefit reviews from August 2015 to July 2016. The Defendant testified that he began working for [REDACTED] as a “casual employee” at that time. He testified that a “casual employee” was someone the hospital used on an as-needed basis. He stated he would sign a registration book listing himself as available for shifts of work wherein the hospital was short-staffed and needed additional nursing workers. He stated that, per hospital instructions, he would call in about two hours before the beginning of his requested shift to find out if he was still needed for that shift. He added that sometimes he was needed and sometimes he was not.

The Defendant testified that in June 2015, when he had not been working for [REDACTED] more than a month, he had to perform a SNAP benefit review. He testified that he did not know how to report his “casual employment” because at the time of the review, he had only worked two or three shifts. For the other shifts, he stated, he called the hospital two hours early and found that he was not needed. He testified he reported this information to the DHHR eligibility worker with whom he completed his review by telephone. He stated the worker informed him because the employment was not possible to predict, it was not necessary for him to report this income. He stated that throughout the period of August 2015 to July 2016, he followed the instructions from

the DHHR worker with whom he completed the June 2015 review and did not report his employment at [REDACTED].

The Defendant testified that throughout this period of time, he did report his college financial aid and his earnings as a pizza delivery driver. He argued that this income was more substantial than the income he received from [REDACTED]. He added that when the Department asked him to verify his employment at [REDACTED] in August 2016, he complied and provided all employment information.

The Department's representative stated that the review forms the Defendant completed throughout the August 2015 to July 2016 period instructed him to report all income, but he did not do so. She pointed out that according to the hospital employment records (Exhibit D-4), there was not a hospital payment period wherein the Defendant received no pay.

There is no record of the conversation between the Defendant and the DHHR eligibility worker with whom he completed his June 26, 2015, benefit review. However, the Defendant reported his earnings from other sources throughout this period of time. Although he should have reported these earnings, the Department did not provide clear and convincing evidence that the Defendant deliberately withheld the employment information in order to receive SNAP benefits to which he was not entitled.

#### **CONCLUSIONS OF LAW**

- 1) Pursuant to the Code of Federal Regulations 7 CFR §273.16, the Department did not provide clear and convincing evidence that the Defendant deliberately withheld information regarding his employment at [REDACTED], in order to receive SNAP benefits to which he was not entitled.
- 2) No disqualification penalty will be imposed upon the Defendant's receipt of SNAP benefits.

#### **DECISION**

It is the ruling of the Hearing Officer that the Defendant did not commit an Intentional Program Violation. He will not be disqualified from participating in SNAP.

**ENTERED this 23<sup>rd</sup> Day of May 2017.**

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**Stephen M. Baisden  
State Hearing Officer**