



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

June 13, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1503

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: Appellant'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: 17-BOR-1503

**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 22, 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 May 4, 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 Brian Shreve, Repayment Investigator. The Defendant did not appear. 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 Benefit Recovery Referral dated January 5, 2017
- M-3 Form ES-FS-5, Food Stamp (now SNAP) Claim Determination
- M-4 Sentencing Order from the Circuit Court of ██████████ County, WV, dated February 22, 2013
- M-5 West Virginia Income Maintenance Manual (WV IMM) Chapter 9, §9.1.A.2.g(6)
- M-6 Mail-in SNAP periodic review form, dated February 18, 2014
- M-7 Case recordings from Defendant's SNAP case record, from February 26 through May 16, 2014
- M-8 Mail-in SNAP review form, dated August 17, 2015

- M-9 Case recordings from Defendant's SNAP case record, from September 28, 2015, through February 25, 2016
- M-10 WV IMM Chapter 1, §1.2.E
- M-11 WV IMM Chapter 20, §20.2
- 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 March 1, 2017

Defendant's Exhibits

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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 she did not report on SNAP benefit reviews and applications that she had been convicted of a drug felony.
- 2) The Defendant had been a recipient of SNAP benefits since 2001.
- 3) On June 5, 2012, the Defendant pled guilty to Delivery of a Schedule III Controlled Substance, a drug felony, in the Circuit Court of ██████ County, WV (Exhibit M-4). She was sentenced to two years' probation on February 22, 2013.
- 4) From June 2012 to February 2017, the Defendant completed numerous SNAP benefit reviews without disclosing her drug felony conviction.
- 5) The Department's representative asserted that because the Defendant did not report she had been convicted of a drug felony from June 2012 through February 2017, her SNAP assistance group (AG) received \$7165 in 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 is able to make a correct decision about his/her eligibility.

WV IMM Chapter 9.1.A.2.g reads, "Persons who are excluded by law . . . are ineligible [for SNAP benefits] and may not be a separate AG." WV IMM Chapter 9.1.A.2.g(6) specifies that among those excluded by law are individuals who have been "convicted of a felony offense

which occurred after 8/22/96 which involved an element of the possession, use or distribution of a controlled substance,” and that those individuals are permanently excluded from SNAP.

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 [or she] 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.

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 or access device.

DISCUSSION

The Defendant failed to report that she had been convicted of a drug felony on SNAP reviews from June 2014 through February 2017. She received SNAP benefits based on this incorrect information.

The Department’s representative submitted a sampling of the numerous reviews she completed during this period of time. On February 18, 2014, she submitted a periodic review form (Exhibit M-6), which contained a questionnaire item, item #3, asking her to list all of her assistance group members who “have been . . . convicted of a drug felony for possession, use, or distribution of a controlled substance after 8/22/1996 . . .” The Defendant did not list anyone from her household as a convicted drug felon. On September 14, 2015, the Defendant completed a telephone interview as part of a SNAP benefit review (Exhibit M-8), wherein she again reported that no one in her household had been convicted of a drug felony.

The Department proved by clear and convincing evidence that the Defendant committed an Intentional Program Violation (IPV) by not reporting she had been convicted of a drug felony on SNAP reviews from June 2012 through February 2017.

CONCLUSIONS OF LAW

- 1) Pursuant to the Code of Federal Regulations 7 CFR §273.16, the Department provided clear and convincing evidence that the Defendant made false or misleading statements,

or misrepresented, concealed or withheld facts, in order to receive SNAP benefits to which her assistance group was not entitled.

- 2) The Department presented clear and convincing evidence that the Defendant committed an Intentional Program Violation by not reporting on numerous SNAP eligibility reviews she had been convicted of a drug felony in June 2012, in violation of WV IMM §1.2.E and §9.1.A.2.g(6).
- 3) The Department must impose a disqualification penalty. The disqualification penalty for a first offense 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, 2017.

ENTERED this 13th Day of June 2017.

**Stephen M. Baisden
State Hearing Officer**