



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

August 14, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-2037

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: Brian Shreve, Repayment Investigator

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

██████████,

Defendant,

v.

Action Number: 17-BOR-2037

**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 June 26, 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 August 3, 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 May 9, 2017
- M-3 Form ES-FS-5, Food Stamp (now SNAP) Claim Determination
- M-4 Case recordings from Defendant's SNAP case record, from December 27, 2016 through May 19, 2017
- M-5 Plea Order from the Circuit Court of ██████████ County, WV, dated July 29, 2013
- M-6 SNAP benefit Application and Rights and Responsibilities forms, signed and dated by Defendant on January 15, 2014
- M-7 Case recording from Defendant's SNAP case record, dated January 15, 2014
- M-8 SNAP telephone review form, dated May 17, 2016

- M-9 Case recordings from Defendant's SNAP case record, from June 22 through December 8, 2016
- M-10 West Virginia Income Maintenance Manual (WV IMM) Chapter 9, §9.1.A.2.g
- M-11 WV IMM Chapter 1, §1.2.E
- M-12 WV IMM Chapter 20, §20.2
- M-13 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 he did not report on multiple SNAP benefit reviews and applications that he had been convicted of a drug felony.
- 2) The Defendant had been a recipient of SNAP benefits since 2001.
- 3) On May 30, 2013, the Defendant pled guilty in the Circuit Court of ██████ County, WV, to Attempted Cultivation, a drug felony (Exhibit M-5).
- 4) From January 2014 to May 2017, the Defendant completed numerous SNAP benefit reviews without disclosing his drug felony conviction.
- 5) The Department's representative asserted that because the Defendant did not report he had been convicted of a drug felony from January 2014 through May 2017, his SNAP assistance group (AG) received \$7306 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 he had been convicted of a drug felony on SNAP reviews from January 2014 through May 2017. He received SNAP benefits based on this incorrect information.

The Department’s representative submitted a sampling of the numerous reviews he completed during this period of time. On February 18, 2014, he submitted an application/review form (Exhibit M-6). Page 6 of this document contained a questionnaire item asking him if he or any members of his SNAP assistance group have been “convicted of a felony under Federal or State law for possession, use, or distribution of a controlled substance (felony drug conviction) after August 22, 1996” The Defendant checked “No” at this item. On May 17, 2016, the Defendant completed a telephone interview as part of a SNAP benefit review (Exhibit M-8), wherein he again reported that no one in his 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 he 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 his 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 he had pled guilty to a drug felony in May 2013, 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. He will be disqualified from participating in SNAP for one year, beginning September 1, 2017.

ENTERED this 14th Day of August 2017.

**Stephen M. Baisden
State Hearing Officer**