



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

November 21, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 17-BOR-2323

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Elizabeth Mullins, Department Representative

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

██████████,

Defendant,

v.

Action Number: 17-BOR-2323

**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 August 18, 2017. 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 §273.16. The hearing was convened on September 26, 2017.

The matter before the Hearing Officer arises from a request by the Movant 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 12 months.

At the hearing, the Movant appeared by Elizabeth Mullins. The Defendant was notified of the hearing but failed to appear, resulting in the hearing being held in the Defendant's absence. The witness was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- D-1 Code of Federal Regulations, 7 CFR §273.16
- D-2 SNAP claim determination form and supporting documentation
- D-3 SNAP application form, signed December 2, 2016
- D-4 Case comments regarding the Defendant's case from the Movant's data system, entry dates November 4, 2016, through February 17, 2017
- D-5 Written statement from ██████████, dated August 7, 2017, regarding events from December 2, 2016
- D-6 Income verification from ██████████ dated July 24, 2017
- D-7 West Virginia Income Maintenance Manual (WVIMM), §1.2 (excerpt)
- D-8 WVIMM, §20.2
- D-9 WVIMM, §20.6 (excerpt)
- D-10 Administrative Disqualification Hearing documents

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 Defendant received an overissuance of SNAP benefits during the month of December 2016 totaling \$106 (Exhibit D-2).
- 2) The overissuance was based on the exclusion of earned income from the calculation of the Defendant's SNAP benefits.
- 3) The Defendant's spouse – [REDACTED] – was employed and had earned income at the time of this SNAP application (Exhibit D-4).
- 4) The Movant requested this hearing to determine if the alleged actions of the Defendant constitute an Intentional Program Violation (IPV) of SNAP.

APPLICABLE POLICY

The Code of Federal Regulations, 7 CFR §273.16(c) defines an IPV as having intentionally “concealed or withheld facts” for purposes of SNAP eligibility.

DISCUSSION

The Defendant did not appear for the hearing, and as such could not dispute facts presented by the Movant.

To show the Defendant committed an IPV, the Movant must prove, by clear and convincing evidence, that the Defendant intentionally concealed or withheld facts pertinent to her SNAP eligibility.

The Movant clearly showed the Defendant's SNAP benefits were approved without consideration of income from the Defendant's spouse, [REDACTED]. Mr. [REDACTED] was employed at the time of the Defendant's SNAP application, and documents provided by the Movant show that this income was not considered in determining the Defendant's SNAP benefit amount.

The Movant did not provide a document to support their claim that the Defendant intentionally concealed or withheld these facts. The Defendant signed a SNAP application form which includes the statement, “Under penalty of perjury, I certify that the statements are true and

correct.” This signature sheet does not appear to be from the same document as the remainder of Exhibit D-3 (page 17 is identified as “Page 17 of 18” and has a “printed date” of July 27, 2017; page 18 appears to have been printed on December 2, 2016, and is identified as “Page 18 of 21”). The application form does not certify a false statement from the Defendant regarding Mr. [REDACTED] employment. The Movant cannot expand the set of statements certified by an applicant’s signature to include things not asked on the application document. It should be noted that if the Defendant were to glean anything regarding Mr. [REDACTED] employment status from the December 2016 application, it would be that Mr. [REDACTED] was “engaged in work activity or [had] good cause.” (Exhibit D-3, page 11)

The Movant provided a statement from a Department employee – in lieu of testimony – regarding her recollection of the Defendant’s application eight months after it was conducted. This statement was given virtually no weight for this reason. Such documents would rarely be considered when a Department employee is still employed and available for testimony and cross-examination.

Because the Movant did not provide clear and convincing proof that the Defendant concealed or withheld facts pertinent to her SNAP eligibility, the Movant did not establish an IPV by the Defendant.

CONCLUSION OF LAW

Because the Defendant was not shown to have concealed or withheld facts pertinent to her SNAP benefits, the Defendant has not committed an Intentional Program Violation.

DECISION

It is the finding of the State Hearing Officer that the Defendant did not commit a SNAP Intentional Program Violation.

ENTERED this ____ Day of November 2017.

Todd Thornton
State Hearing Officer