



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Jim Justice
Governor

BOARD OF REVIEW
Raleigh District DHHR
407 Neville Street
Beckley, WV 25801

Bill J. Crouch
Cabinet Secretary

October 11, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-2408

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Christine Allen, [REDACTED] County DHHR

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

██████████,

Defendant,

v.

Action Number: 17-BOR-2408

**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 September 5, 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 October 10, 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.

At the hearing, the Movant appeared by Rusty Udy, Repayment Investigator. The Defendant appeared *pro se*. Both participants were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Hearing Summary
- M-2 SNAP Claim Determination Forms
- M-3 SNAP Issuance History-Disbursement Screen Prints
- M-4 SNAP Allotment Determination Screen Prints
- M-5 Case Members History Screen Print
- M-6 Case Comments from December 2012 – July 2017
- M-7 inROADS Application signed December 1, 2012, Combined Application and Review Form dated December 4, 2012 and Rights and Responsibilities Form dated December 4, 2012; Combined Application and Review Form dated April 30, 2013 and Rights and Responsibilities Form dated April 30, 2013; SNAP and Medicaid/WV CHIP Review Form dated September 26, 2013; SNAP and

- Medicaid/WV CHIP Review Form dated April 16, 2014; and SNAP and Medicaid/WV CHIP Review Form dated October 2, 2014
- M-8 Benefit Recovery Referral Screen Print
- M-9 State Online Query Screen Print
- M-10 Twelfth Judicial Circuit Court of [REDACTED] Judgement dated May 21, 2004
- M-11 Suspect Interview Letter dated August 11, 2017
- M-12 Advance Notice of Administrative Disqualification Waiver dated August 25, 2017
- M-13 West Virginia Income Maintenance Manual §1.2(E)
- M-14 West Virginia Income Maintenance Manual §9.1(A)(2)(g)(6)
- M-15 West Virginia Income Maintenance Manual §20
- M-16 Code of Federal Regulations – 7 CFR §273.16

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 Movant alleged that the Defendant committed an Intentional Program Violation by withholding information regarding her felony drug conviction.
- 2) The Defendant submitted a SNAP application electronically via inROADS on December 1, 2012. The Defendant attested that no one in her household had been convicted of a drug felony for possession, use or distribution of a controlled substance on or after August 23, 1996 (Exhibit M-7).
- 3) The Defendant completed SNAP reviews on April 30, 2013, September 26, 2013, April 16, 2014, October 2, 2014, March 30, 2015, October 28, 2015, July 11, 2016 and December 12, 2016, each time attesting that no one in her household had been convicted of a drug felony for possession, use or distribution of a controlled substance on or after August 23, 1996 (Exhibit M-7).
- 4) The Defendant completed a SNAP review on June 8, 2017, and reported that she was convicted of a drug felony in 2004 (Exhibit M-6).
- 5) The Movant obtained a Judgement from Twelfth Judicial Circuit Court of [REDACTED] [REDACTED] dated May 21, 2004, documenting that the Defendant was convicted of a felony offense for the possession of a controlled substance (Exhibit M-10).
- 6) The Movant contended that the Defendant provided false information regarding her status as a convicted drug felon at her SNAP application and reviews. The result of the false representation was an overpayment of SNAP benefits of \$3,977 issued from December 2012 through April 2015 to the Defendant for which she was not eligible (Exhibit M-2).

APPLICABLE POLICY

Code of Federal Regulations, 7 CFR §273.16, establishes that an individual making a false or misleading statement, or misrepresenting, concealing or withholding facts, violating the Food Stamp Program, or any State statute for the purpose of acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system has committed an Intentional Program Violation (IPV).

West Virginia Income Maintenance Manual §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. Failure to fulfill this obligation may result in one or more of the following actions: denial of the application, closure of the active AG, removal of the individual from the AG, repayment of benefits, and/or a reduction in benefits.

West Virginia Income Maintenance Manual §9.1A(2)g states that individuals convicted of a felony offense which occurred after August 22, 1996, which involved possession, use or distribution of a controlled substance as defined by section 802 (6) of the Controlled Substance Act are permanently disqualified from participation in SNAP and may not be a separate AG.

West Virginia Income Maintenance Manual §20.2 states 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 (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the SNAP entitlement of the AG and the SNAP allotment the AG was entitled to receive.

DISCUSSION

Pursuant to policy, individuals found guilty of a felony drug offense for possession, use or distribution of a controlled substance are permanently disqualified from participation in SNAP. The Defendant was convicted of a felony offense for the possession of a controlled substance in 2004. The Defendant was not eligible to receive SNAP benefits for herself when she applied in 2012.

Federal regulations define an Intentional Program Violation as making a false statement related to the acquisition of SNAP benefits. The Defendant gave false information at her December 2012 SNAP application and subsequent SNAP reviews by reporting that no one in her household had been convicted of a drug felony offense. The Defendant's actions meet the definition of an Intentional Program Violation.

The Defendant testified that she believed policy only excluded drug felons from participation in SNAP who had been convicted of drug trafficking or distribution of controlled substances, and not simple possession that she was convicted of. The Defendant contended that she did not realize she was doing anything wrong by not reporting her felony drug conviction.

The December 2012 SNAP application specifically asked if anyone in the Defendant's household had been convicted of a felony offense for **possession** [emphasis added], use or distribution of a

controlled substance on or after August 23, 1996, to which the Defendant answered “no”. The Defendant continued to withhold her status as a drug felon for years at subsequent SNAP reviews. The Defendant’s claim that she did not know she had to report her conviction is without merit.

CONCLUSIONS OF LAW

- 1) Federal regulations define an Intentional Program Violation as making a false statement related to the acquisition of SNAP benefits.
- 2) The Defendant intentionally withheld information regarding her felony drug conviction at her initial SNAP application and subsequent SNAP reviews.
- 3) The Defendant’s actions meet the definition of an Intentional Program Violation.

DECISION

It is the finding of the State Hearing Officer that the Defendant committed an Intentional Program Violation. Under the law, the Defendant is already permanently disqualified from SNAP due to her status as a convicted drug felon, therefore the 12-month disqualification will be served concurrently beginning November 2017 through October 2018, at which time the Defendant will not resume eligibility due to her drug felony conviction.

ENTERED this 11th day of October 2017

Kristi Logan
State Hearing Officer