



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1900 Kanawha Blvd East, Building 6, Rm 817-B
Charleston, West Virginia 25305

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

April 6, 2021

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 21-BOR-1188

Dear [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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: Debra Carey, IFM, [REDACTED] Co. DHHR

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

████████████████████,

Defendant,

v.

Action No: 21-BOR-1188

**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 30, 2020. 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 March 25, 2021.

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 therefore should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months.

At the hearing, the Movant appeared by Debra Carey, Investigations and Fraud Management. The Defendant failed to appear. Ms. Carey was sworn, and the following documents were admitted into evidence:

Movant's Exhibits:

- M-1 ADH Hearing Summary
- M-2 Screen print of RAPIDS Benefit Recovery Referral (BVRF) dated July 13, 2020
- M-3 SNAP review form (PRC2), signed and dated November 6, 2019
- M-4 Bureau of Child Support Enforcement screen print of OSCAR Narratives dated November 19, 2019 and November 20, 2019
- M-5 West Virginia Department of Health and Human Services Bureau of Children and Families Client Contact Report (FACTS)
- M-6 Employment record from ██████████ for ██████████ from ██████████
- M-7 Screen Print from RAPIDS of SNAP Issuance History – Disbursement (IQFS)
- M-8 Food Stamp Claim Determination and calculation sheets
- M-9 Screen print from eRAPIDS Case Comments November 12, 2019 – August 31, 2020

- M-10 Advance Notice of Administrative Disqualification Hearing Waiver dated January 13, 2021 (ig-ifm-ADH Ltr)
- M-11 Waiver of Administrative Disqualification Hearing (ig-ifm-ADH-waiver); faxed copy requesting hearing from Defendant
- M-12 West Virginia Income Maintenance Manual (WV IMM), Chapter 1, §1.2.4
- M-13 West Virginia Income Maintenance Manual (WV IMM), Chapter 3, §§3.2.1, 3.2.1.A, 3.2.1.A.2 and 3.2.1.A.4
- M-14 West Virginia Income Maintenance Manual (WV IMM), Chapters 11, §§11.2, 11.2.2, 11.2.3, 11.2.3.B
- M-15 Code of Federal Regulations, 7 CFR §273.16
- M-16 Interstate Paternity Acknowledgment Certification (IPACT) verification of marriage

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 (IPV) by intentionally failing to report during her November 12, 2019 SNAP review that [REDACTED], her husband and the father of her child, was living in the home and receiving earned income. (Exhibits M-1 and M-3) The Movant requested that an IPV penalty of 12 months be imposed against the Defendant.
- 2) The Defendant was notified of the hearing by a scheduling order mailed on February 10, 2021. The Defendant failed to appear for the hearing or provide good cause for her failure to do so. In accordance with 7 CFR §273.16(e)(4)) and West Virginia Department of Health and Human Resources' Common Chapters Manual, §740.20, the hearing was held without the Defendant in attendance.
- 3) The Defendant's child [REDACTED] is the son of Mr. [REDACTED]. (Exhibits M-4 and M-5)
- 4) On the Defendant's SNAP review, she reported that the only household members were her two children, [REDACTED] and [REDACTED], and [REDACTED]. (Exhibits M-3 and M-9)
- 5) The Defendant reported that there was only unearned income in the household. (Exhibits D-3 and D-9)
- 6) Mr. [REDACTED] was employed with [REDACTED]. (Exhibit M-6)

APPLICABLE POLICY

Code of Federal Regulations, 7 CFR §273.16, explains that 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 of 1977, 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 (access device). (See also, WV IMM, Chapter 11, §11.2.3.B)

Individuals found to have committed an Intentional Program Violation through an Administrative Disqualification Hearing shall be ineligible to participate in the Supplemental Nutrition Assistance Program for twelve months for the first intentional Program violation. (See, 7 CFR §273.16(b)(1)(i) and WV IMM, Chapter 3, §3.2.1.B.5)

Code of Federal Regulations, 7 CFR §273.16(e)(6) states the determination of an Intentional Program Violation will be based on clear and convincing evidence that demonstrates that the household member committed and intended to commit an Intentional Program Violation as defined above.

DISCUSSION

The Movant's Investigations and Fraud Management (IFM) worker, Debra Carey, was assigned to investigate a referral alleging that the Defendant's husband (and father of the Defendant's son) was living in the Defendant's household and receiving employment income. Investigator Carey determined that Mr. [REDACTED] was living in the Defendant's household during the time the Defendant completed her SNAP review on November 12, 2019. Based upon her findings, Investigator Carey requested an Administrative Disqualification Hearing to establish a first offense SNAP IPV against the Defendant.

The Defendant was notified of the ADH scheduling and failed to appear at the hearing to contest the Movant's evidence. Pursuant to federal regulations, the hearing was held in the Defendant's absence.

Federal regulations define an IPV as making a false statement related to the acquisition of SNAP benefits. The Movant must show by clear and convincing evidence that the Defendant intentionally failed to report on her November 12, 2019 SNAP review that Mr. [REDACTED] was living in her household.

The Defendant completed her review for SNAP recertification on November 12, 2019, reporting that her two children and [REDACTED] were in her household. The Defendant reported unearned income as the only source of income for the household. Based upon the Defendant's information, her SNAP benefits were recertified.

Investigator Carey asserted that based upon case comments from the Bureau of Child Support Enforcement (BCSE) computer system and the address listed on an employment verification reporting system, that Mr. [REDACTED] had been residing with the Defendant at the time of her November 12, 2019 SNAP review. However, the BCSE case comments reported a November 19, 2019 conversation with Mr. [REDACTED] who stated that he was back in the Defendant's household. The evidence only showed that Mr. [REDACTED] was back in the Defendant's household by November 19, 2019, several days after the Defendant's SNAP review. The Movant presented additional documentation from the Work Number verifying Mr. [REDACTED] employment with [REDACTED] which listed his address of record as of November 20, 2020 of [REDACTED]. However, the only evidence presented by the Movant supporting that this address was the same as the Defendant's was on a Repayment Referral dated July 13, 2020. The address noted on the Defendant's November 6, 2019 review form showed an address of [REDACTED].

The evidence presented by the Movant showed that Mr. [REDACTED] was living in the Defendant's household by November 19, 2019. Although it is more likely than not that Mr. [REDACTED] was in the household at the time of the Defendant's SNAP review on November 12, 2019, the standard of proof that must be met by the Movant is clear and convincing evidence. Because there was no evidence presented showing Mr. [REDACTED] was in the Defendant's household when she completed her SNAP review on November 12, 2019, the burden of proof was not met.

CONCLUSIONS OF LAW

- 1) Intentional Program Violations include violations 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 as part of an automated benefit delivery system (access device).
- 2) The determination of an Intentional Program Violation is based on clear and convincing evidence that demonstrates that the household member committed and intended to commit an Intentional Program Violation.
- 3) The Movant failed to establish by clear and convincing evidence that [REDACTED] was living in the Defendant's household at the time of her November 12, 2019 SNAP review.

DECISION

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

ENTERED this 6th day of April 2021.

Lori Woodward, Certified State Hearing Officer