



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

Bill J. Crouch
Cabinet Secretary

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

Jolynn Marra
Interim Inspector General

December 1, 2021

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 21-BOR-2281

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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

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

cc: Anisha Eye, [REDACTED] DHHR

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

██████████,

Defendant,

v.

Action Number: 21-BOR-2281

**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 October 26, 2021. 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 November 30, 2021.

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

At the hearing, the Movant appeared by Anisha Eye, Repayment Investigator. The Defendant appeared *pro se*. The witnesses were in sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Hearing Summary
- M-2 Case Members History Screen Print
- M-3 SNAP Issuance History-Disbursement Screen Print
- M-4 SNAP Allotment Determination Screen Prints
- M-5 Non-Financial Eligibility Determination Screen Prints
- M-6 SNAP Claim Determination Forms
- M-7 SNAP Claim Calculation Sheets
- M-8 School Enrollment Verification – West Virginia - dated July 1, 2021
- M-9 School Enrollment Verification – ██████████ – dated August 2, 2021
- M-10 SNAP Application dated July 17, 2016
- M-11 SNAP Review Form/Medicaid Application dated January 11, 2017
- M-12 SNAP Application dated September 28, 2017

- M-13 SNAP Review Form dated February 6, 2018
- M-14 SNAP Review Form/School Clothing Allowance Application dated July 14, 2018
- M-15 SNAP Review Form dated January 2, 2019
- M-16 SNAP Review Form/School Clothing Allowance Application dated July 6, 2019
- M-17 SNAP Review Form dated December 6, 2019
- M-18 SNAP Application dated February 21, 2019
- M-19 SNAP Review Form dated November 16, 2020
- M-20 Waiver of Administrative Disqualification Hearing (unsigned copy)
- M-21 Advance Notice of Administrative Disqualification Hearing Waiver dated October 14, 2021
- M-22 West Virginia Income Maintenance Manual §§1.2.4, 2.2.2.C.1, 2.2.2.A.1, 11.2, and 11.6
- M-23 Code of Federal Regulations – 7 CFR §273.16

Defendant’s Exhibits:

None

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 contended that the Defendant committed an Intentional Program Violation by falsely reporting her household composition and requested that a 12-month SNAP disqualification penalty be imposed against her.
- 2) The Defendant applied for SNAP benefits on January 11, 2017. She reported that her household consisted of herself and her daughter, [REDACTED]
- 3) Under the question “Does this person intend to reside in West Virginia?”, the Defendant answered “Yes” for [REDACTED]
- 4) The Defendant received SNAP benefits for herself and [REDACTED] on and off from January 2017 through June 2021.
- 5) The Defendant reported that [REDACTED] intended to reside in West Virginia on subsequent SNAP reapplications and review forms throughout her receipt of SNAP benefits.
- 6) The Movant verified with [REDACTED] High School in [REDACTED], [REDACTED] that [REDACTED] has been enrolled and attending school there since August 2011.
- 7) The Movant contended that the Defendant provided false statements at each SNAP application and review by reporting that [REDACTED] intended to reside in West Virginia when she only came to West Virginia for visitation with the Defendant. The result of the

misrepresentation of her household composition was an overissuance of SNAP benefits of \$7,658 issued from January 2017 through June 2021 for which she was not eligible to receive.

APPLICABLE POLICY

Code of Federal Regulations, 7 CFR §273.16, states that an individual making a false or misleading statement, or misrepresenting, concealing or withholding facts, violating the Food Stamp Program (SNAP), 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 §1.2.4 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

West Virginia Income Maintenance Manual §11.2.3.B states that IPV's include making false or misleading statements, misrepresenting facts, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. The client(s) who is found to have committed an IPV is ineligible to participate in the program for a specified time, depending on the number of offenses committed.

West Virginia Income Maintenance Manual §3.2.1.B.5 states that persons who have been found guilty of an IPV are disqualified as follows:

- First offense – one-year disqualification
- Second offense - two-year disqualification
- Third offense - permanent disqualification

West Virginia Income Maintenance Manual §2.2 states to be eligible to receive benefits, the client must be a resident of West Virginia. The client must live within the borders of West Virginia for purposes other than vacation. There is no minimum time requirement for how long the client must live or intends to live in West Virginia. The client is not required to maintain a permanent or fixed dwelling. An individual remains a resident of the former state until he arrives in West Virginia with the intention of remaining indefinitely. Therefore, intent to establish or abandon residency must be known before the state of residence is determined.

West Virginia Income Maintenance Manual §2.2.1.C states regardless of the reason for the absence, any person expected to be absent from the home for a full calendar month or more is not eligible to be included in the assistance group (AG). Shorter absences do not affect eligibility. This policy applies to visiting, obtaining vocational training or education, and obtaining medical care. This policy applies to in-state and out-of-state travel. Although an individual may meet the residency requirement, he may not be eligible to be included in the AG.

West Virginia Income Maintenance Manual §§11.2 and 11.3 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.

A UPV claim may be established when:

- An error by the Department of Health and Human Resources (DHHR) resulted in the overissuance
- An unintentional error made by the client resulted in the overissuance
- The client's benefits are continued pending a Fair Hearing decision and the subsequent decision upholds the DHHR's action
- It is determined by court action or ADH the client did not commit an IPV; the claim is pursued as a UPV
- The AG received SNAP solely because of Categorical Eligibility, and it is subsequently determined ineligible for WV WORKS and/or Supplemental Security Income (SSI) at the time it received it
- The DHHR issued duplicate benefits and the overissued amount was not returned
- The DHHR continued issuance beyond the certification period without completing a redetermination

Agency Error UPV Claims are established when:

- Failure to Take Prompt Action: The first month of overissuance is the month the change would have been effective had the agency acted promptly.
- Computation Error: The first month of overissuance is the month the incorrect allotment was effective.

Client Error UPV Claims are established:

- When the client fails to provide accurate or complete information, the first month of the overissuance is the month the incorrect, incomplete, or unreported information would have affected the benefit level considering notice and reporting requirements.

IPV Claims are established when:

- IPVs include making false or misleading statements, misrepresenting facts, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits.
- The client(s) who is found to have committed an IPV is ineligible to participate in the program for a specified time, depending on the number of offenses committed.
- An IPV can only be established in the following ways:
 - The client signs an IG-BR-44, Waiver of Rights to an ADH
 - By an ADH decision
 - By Diversionary Consent Agreement
 - By court decision

DISCUSSION

Federal regulations define an Intentional Program Violation as making a false statement related to the acquisition of SNAP benefits. An individual who is found to have committed an Intentional Program Violation is disqualified from participation in SNAP.

The Movant contended that the Defendant made false statements on multiple SNAP applications and review forms by reporting that her daughter intended to reside in West Virginia. The Movant was aware that the Defendant's daughter lived with her father and the Defendant had visitation with [REDACTED] but argued that the Defendant withheld the fact that [REDACTED] lived in [REDACTED] where she attended school full-time.

The Defendant testified that she never intended to provide false information to receive SNAP for her daughter. The Defendant claimed that she reported the name of her daughter's school in [REDACTED] on several forms submitted to the Movant and she never withheld the fact that [REDACTED] father lived in [REDACTED]. Regarding the question about intent to reside in West Virginia, the Defendant stated in her mind [REDACTED] resided with her during those periods of visitation so she thought she was answering the question truthfully. Had the forms asked if [REDACTED] was a resident of West Virginia, the Defendant argued that she would have answered that [REDACTED] was not.

Policy stipulates that an individual must reside within the borders of West Virginia for purposes other than vacation to receive SNAP benefits. An individual remains a resident of the former state of residence until he or she arrives in West Virginia with the intention of remaining indefinitely. The Defendant's daughter had no intention of remaining indefinitely in West Virginia as she was a resident of [REDACTED], where she lived primarily with her father. The Defendant was not eligible to receive SNAP benefits for [REDACTED] during her periods of visitation.

To establish if an Intentional Program Violation was committed, the Movant had to provide clear and convincing evidence that the Defendant made a false or misleading statement, or misrepresented, concealed or withheld facts for the purpose of acquiring SNAP benefits. The Defendant provided credible testimony that she misunderstood the purpose of the question regarding [REDACTED] intent to reside in West Virginia and had the question been worded differently, she would not have concealed that [REDACTED] was a resident of [REDACTED]. The Defendant did not withhold information from the Movant that her daughter lived primarily with her father and that she only had visitation.

Whereas the Defendant did not mislead or intentionally withhold or provide false information regarding [REDACTED] residency to receive SNAP benefits, an Intentional Program Violation did not occur. However, policy states that when an assistance group has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing a repayment claim. The claim is the difference between the SNAP entitlement of the assistance group and the SNAP allotment the assistance group was entitled to receive. The Defendant was not eligible to receive SNAP benefits for [REDACTED] and is therefore required to repay those benefits.

CONCLUSIONS OF LAW

- 1) An Intentional Program Violation has occurred when an individual made a false or misleading statement, or misrepresented, concealed or withheld facts for the purpose of acquiring SNAP benefits.
- 2) The Movant failed to provide clear and convincing evidence that the Defendant intentionally withheld or misrepresented her daughter's state of residency to receive SNAP benefits.
- 3) The Defendant did not commit an Intentional Program Violation.
- 4) When an assistance group has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing a repayment claim.
- 5) The Defendant's daughter is a resident of [REDACTED] and was not eligible to receive SNAP benefits in West Virginia.
- 6) The Defendant must repay any SNAP benefits issued on behalf of [REDACTED] for which she was not eligible to receive.

DECISION

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

ENTERED this 1st day of December 2021.

Kristi Logan
Certified State Hearing Officer

