



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Inspector General

October 13, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-2100

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Emily Shumate, WVDHHR

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

██████████,

Defendant,

v.

Action Number: 22-BOR-2100

**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 8, 2022. 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 Section 273.16. The hearing was convened on October 12, 2022.

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

At the hearing, the Movant appeared by Emily Shumate, Repayment Investigator, WVDHHR. The Defendant appeared *pro se*.

The witnesses were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 ADH Hearing Summary
- M-2 Case Members History
- M-3 SNAP Issuance History- Disbursement
- M-4 Food Stamp Allotment Determinations
- M-5 Non-Financial Eligibility Determination
- M-6 Case Comments from Movant's computer system
- M-7 SNAP application submitted by Defendant via PATH on November 5, 2021
- M-8 Combined Application and Review Form submitted on November 23, 2021
- M-9 Notices of Action from ██████████, Job and Family Services dated November 4, 2021
- M-10 Employment Statement for Defendant dated November 24, 2021
- M-11 Copy of Case Details for ██████████, ██████████ Common Pleas Court

- M-12 [REDACTED] Common Pleas Court Magistrate Orders filed January 19, 2022
- M-13 Waiver of Administrative Disqualification Hearing
- M-14 Advance Notice of Administrative Disqualification Hearing Waiver dated August 9, 2022
- M-15 West Virginia Income Maintenance Manual Chapters 1.2.4, 11.2 and 11.6.1
- M-16 Code of Federal Regulations Section 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) A request for an Administrative Disqualification Hearing was received by the Board of Review from the West Virginia Department of Health and Human Resources, hereinafter referred to as Movant, on September 8, 2022.
- 2) The Movant contends that the Defendant has committed an Intentional Program Violation (IPV) and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, for a period of 12 months.
- 3) The Movant's Investigations and Fraud Management (IFM) Unit received a referral regarding the Defendant's SNAP case on April 8, 2022.
- 4) The referent alleged that [REDACTED] three children, all of whom were included in the Defendant's SNAP Assistance Group, did not reside in West Virginia.
- 5) The Defendant submitted a SNAP application via the internet on November 5, 2021 (Exhibit D-7).
- 6) The Defendant completed a SNAP application telephone interview on November 8, 2021, reporting that he resided with [REDACTED] and her three children in a homeless shelter, and that they purchased and prepared meals together (Exhibit M-6).
- 7) The application was pended for verification of income and documentation that SNAP benefits for [REDACTED] and her children had been closed in the [REDACTED] (Exhibit M-6).
- 8) On November 23, 2021, the Movant received verification that SNAP and Medicaid benefits for [REDACTED] and her children had been terminated in the [REDACTED] effective

December 2021 (Exhibit M-9). The verification states that benefits were terminated because [REDACTED] and her children were no longer residents of [REDACTED].

- 9) On November 24, 2021, the Movant submitted verification of his income (Exhibit M-10).
- 10) SNAP benefits were approved on December 13, 2021, effective December 1, 2021.
- 11) Magistrate Orders from the Court of Common Pleas of [REDACTED], filed on January 19, 2022, state that a hearing was held on November 23, 2021, regarding an Emergency Order for [REDACTED] children (Exhibit M-12). [REDACTED] was not present for the hearing.
- 12) Case Details from the Court indicate that emergency temporary custody of the children was awarded to [REDACTED], the children's grandmother, on November 23, 2021 (Exhibit M-11).
- 13) The Magistrate Orders filed in January 2022 indicate that the children should remain in the temporary custody of [REDACTED] until further order of the court (Exhibit M-12).
- 14) Case Details indicate that the Court attempted to issue several documents to [REDACTED] on November 24, 2021, including a summons, a Complaint for Custody, and a Motion for a Change of Custody (Exhibit M-11).
- 15) An entry in Court Case Details dated November 30, 2021, states that the summons could not be served to [REDACTED] as she had moved to West Virginia (Exhibit M-11).
- 16) The Defendant was incarcerated from December 28, 2021, through February 9, 2022.
- 17) The Movant sent a new Electronic Benefits Transfer (EBT) card to the Defendant's new address on February 17, 2022 (Exhibit M-6).
- 18) The Defendant reported that the three children were no longer in his home on February 24, 2022 (Exhibit M-6).
- 19) The Movant contends that the Defendant received an overpayment of \$3,968 in SNAP benefits for the period of December 2021 through March 2022 based on failure to report that [REDACTED] children were no longer in the SNAP Assistance Group.

APPLICABLE POLICY

Code of Federal Regulations Section 273.16.c.1 (M-16) states that an Intentional Program Violation includes committing an 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 as part of an automated benefit delivery system (access device).

West Virginia Income Maintenance Manual Chapter 11.2.3.B (Exhibit D-15) 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 Chapter 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; and third offense, permanent disqualification.

DISCUSSION

Regulations specify that an Intentional Program Violation includes committing an 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 as part of an automated benefit delivery system (access device). IPV's include making false or misleading statements, misrepresenting facts, or concealing or withholding information. An individual found to have committed an IPV is ineligible to receive SNAP benefits for a specified time, depending on the number of offenses committed.

The Movant's representative, Emily Shumate, contended that the Defendant committed an IPV because temporary custody of [REDACTED] children was awarded to [REDACTED] mother on November 23, 2021, during the time that the Defendant's SNAP application was still pending. Ms. Shumate testified that the Defendant had opportunity to report that the children were no longer in the home, but failed to provide the information to the Department.

The Defendant testified that he was incarcerated from December 28, 2021, through February 9, 2022, and Case Comments reveal that he contacted the Movant on February 24, 2022, to remove the children from his SNAP Assistance Group. The Defendant indicated that he did not receive the first EBT card sent to him following the approval of his December 2021 SNAP application because it was sent to his former address. Ms. Shumate verified that the Defendant did not utilize any EBT benefits until February 24, 2022. The Defendant testified that he telephoned the Movant's Customer Service Center to inquire about whether he was entitled to all benefits (more than \$3,000) on his EBT card, and a center representative advised him that he could use all of the benefits. The Defendant indicated he had not believed that he was entitled to receive SNAP benefits while he was incarcerated.

While court documents from [REDACTED] indicate that temporary custody of [REDACTED] children was awarded to [REDACTED] mother on November 23, 2021, the timeframes of the children's presence in [REDACTED] is unclear. A letter from the [REDACTED], Job and Family Services office states that SNAP benefits for [REDACTED] and her children were terminated effective December 2021 because they had moved out of state. Based on documentation provided during

the hearing, it is unclear whether the children were in [REDACTED] during the emergency custody hearing or whether they were returned to the state at some point following the hearing.

Based on information provided during the hearing, the Movant has not provided clear and convincing evidence that the Defendant committed an Intentional Program Violation.

CONCLUSIONS OF LAW

- 1) An Intentional Program Violation can be established for SNAP purposes when an individual misrepresents his/her case circumstances.
- 2) The Movant contends that the Defendant failed to report that [REDACTED] children were no longer in his SNAP Assistance Group after their grandmother was awarded temporary custody of them in November 2021.
- 3) It is unclear when a physical change of custody occurred.
- 4) Clear and convincing evidence was not provided to support the imposition of an Intentional Program Violation.
- 5) The Movant's proposal to apply an Intentional Program Violation to the Defendant's SNAP benefits cannot be affirmed.

DECISION

The State Hearing Officer finds that the Defendant has not committed an Intentional Program Violation. The Movant's proposal to impose a 12-month IPV penalty on SNAP benefits is **REVERSED**.

ENTERED this 13th Day of October 2022.

Pamela L. Hinzman
State Hearing Officer