



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Jeffrey H. Coben, MD
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

May 22, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1356

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,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

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

cc: Donald Greathouse, [REDACTED] DHHR

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

██████████,

Defendant,

v.

Action Number: 23-BOR-1356

**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 requested by the Movant on March 10, 2023. 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 April 5, 2023.

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 months.

At the hearing, the Department appeared by Donald Greathouse, Investigation and Fraud Management (IFM). The Defendant failed to appear. The Department's witness was sworn in and the following documents were admitted into the evidence:

Movant's Exhibits:

- M-1 Benefit Recovery Referrals (BVRF), dated December 17, 2021
- M-2 SNAP Claim Determination Forms
- M-3 IFM Appointment Notice, dated February 14, 2023
- M-4 ADH Waiver Notice, dated February 21, 2023
- M-5 Case Comments, dated March 12 through June 16, 2020
- M-6 Case Comments, dated June 22, 2020, through July 23, 2021
- M-7 DHHR PATH SNAP Application, submitted July 14, 2021
- M-8 Court of ██████████ Division, ██████████ Order
- M-9 ██████████ K-8 Student Information
Attendance Verification
- M-10 ██████████ School Student Information
- M-11 Electronic Code of Federal Regulations, effective October 29, 2020

M-12 West Virginia Income Maintenance Manual (WVIMM) Policy Excerpts
M-13 WVIMM Policy Excerpts
M-14 WVIMM Policy Excerpts

Defendant's Exhibits:

None

After a review of the record, including the testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of the witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

SNAP BENEFIT ISSUANCE

- 1) The Defendant was approved to receive SNAP benefits for a four-person Assistance Group (AG) in June 2020 (Exhibit M-5).
- 2) The Movant's Case Comments indicate that the four-person AG included the Defendant's three dependent children (Exhibit M-5).
- 3) The Defendant received issuances of \$455 and \$191 in SNAP benefits from July through September 2020 (Exhibit M-2).
- 4) The Defendant received issuances of \$453 and \$227 in SNAP benefits from October through November 2020 (Exhibit M-2).
- 5) The Defendant did not receive a monthly SNAP benefit allotment from December 2020 through July 2021 (Exhibit M-2).
- 6) The Defendant received issuances of \$303 and \$616 on August 5, 2021 (Exhibit M-2).
- 7) On September 7, 2021, the Defendant received \$616 in SNAP benefits (Exhibit M-2).
- 8) On September 8, 2021, the Defendant received \$95 in SNAP benefits (Exhibit M-2).
- 9) On September 9, 2021, the Defendant received \$95 in SNAP benefits (Exhibit M-2).
- 10) On October 7, 2021, the Defendant received \$658 in SNAP benefits (Exhibit M-2).
- 11) On October 6, 2021, the Defendant received \$95 in SNAP benefits (Exhibit M-2).

12) On November 7 and December 7, 2021, the Defendant was issued \$459 in SNAP benefits (Exhibit M-2).

13) On November 3 and December 2, 2021, the Defendant was issued \$95 in SNAP benefits (Exhibit M-2).

INTENTIONAL PROGRAM VIOLATION (IPV)

14) On December 17, 2021, the Movant received Benefit Recovery Referrals (BVRF) alleging the Defendant received SNAP benefits — from November 1 through November 30, 2020, and from July 14 through December 31, 2021 — for her minor children, [REDACTED] while they resided with their father in [REDACTED] (Exhibit M-1).

15) On February 21, 2023, the Movant issued an Advanced Notice of ADH Waiver advising that the Defendant received SNAP benefits she was not entitled to receive, from November 1, 2020, through December 31, 2021, because she intentionally violated SNAP rules by falsely reporting her child residing in her home as evidenced by court records, eligibility records, and school records (Exhibit M-4).

16) The Defendant and [REDACTED] are the mutual parents of Children [REDACTED] (Exhibits M-7 and M-8).

17) In October 2020, Children [REDACTED] were enrolled as full-time students in [REDACTED] (Exhibits M-9 and M-10).

18) As of August 30, 2021, Child [REDACTED] was enrolled as a full-time student in [REDACTED] (Exhibit M-9).

19) As of July 1, 2021, Child [REDACTED] was enrolled as a full-time student in [REDACTED] (Exhibit M-10).

20) On July 14, 2021, the Defendant applied for SNAP benefits and indicated that the Defendant, [REDACTED] were members of her AG (Exhibit M-7).

21) The Defendant indicated that Children [REDACTED] intended to reside in West Virginia (Exhibit M-7).

22) The Defendant indicated that she cares for and purchases and prepares food with Children [REDACTED] (Exhibit M-7).

23) The Defendant indicated that she claims Children [REDACTED] as dependents on her tax filing (Exhibit M-7).

24) The Defendant certified, by electronic signature, that she read and understood all questions; all information provided was true and correct; and that she had read, understood, and

agreed to the Rights and Responsibilities (hereafter R&R) listed in the PATH application (Exhibit M-7).

- 25) The R&R included the understanding that the Defendant was required to notify the Movant within ten days if there were changes in the household composition (Exhibit M-7).
- 26) On September 27, 2021, Child [REDACTED] was enrolled in [REDACTED] County Schools, West Virginia (Exhibit M-10).
- 27) [REDACTED] a third party, is listed as Child [REDACTED] guardian on the [REDACTED] County Schools, West Virginia, attendance verification form (Exhibit M-10).
- 28) [REDACTED] is listed as the guardian on Child [REDACTED] school records (Exhibits M-9 and M-10).
- 29) Child [REDACTED] was transferred in February 2022 from the [REDACTED] school system to the [REDACTED] school system (Exhibit M-9)
- 30) [REDACTED] is listed as the guardian on Child [REDACTED] school records (Exhibit M-10).
- 31) For the eligibility period March 28 through May 31, 2022, the Defendant's AG included the Defendant, [REDACTED] (Exhibit M-2).

APPLICABLE POLICY

West Virginia Income Maintenance Manual § 1.2.4 provides in the relevant part:

The client's responsibility is to provide complete and accurate information about her circumstances so that the worker is able to make a correct determination about her eligibility.

WVIMM §§ 2.2, 2.2.1.C, and 3.2.1.A provide in relevant parts:

To be eligible to receive benefits, the client must be a resident of West Virginia. The SNAP Assistance Group (AG) must include all eligible individuals who both live together and purchase food and prepare meals together. An individual cannot be a member of more than one SNAP AG in any month.

Code of Federal Regulations 7CFR § 273.16(b)(1)(i) provide in part:

Individuals found to have committed an intentional program violation through an administrative disqualification hearing ... shall be ineligible to participate in SNAP for a period of twelve months for the first intentional program violation.

Code of Federal Regulations 7CFR § 273.16(b)(13) provide in part:

The disqualification period shall begin no later than the second month which follows the date the individual receives written notice of the disqualification. The disqualification period must continue uninterrupted until completed regardless of the eligibility of the disqualified individuals' household.

Code of Federal Regulations 7CFR § 273.16(c)(1) provides in part:

An intentional program violation is defined as an individual having intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts.

Code of Federal Regulations 7CFR § 273.16(e)(4) provides in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if an intentional program violation was committed based on clear and convincing evidence.

Code of Federal Regulations 7 CFR § 273.1(b)(1)(ii)-(iii) provides in relevant parts:

A person under 22 years of age who is living with his or her natural or adoptive parents, or step-parents must be considered as customarily purchasing food and preparing meals with others, even if they do not do so, and thus must be included in the same household unless otherwise specified.

Code of Federal Regulations 7 CFR § 273.1 (a) provides in relevant parts:

A household is composed of

- (1) An individual living alone;
- (2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
- (3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

Code of Federal Regulations 7 CFR § 273.2(k)(1)(iii)(C) provides in relevant parts:

(1) Households shall report changes in accordance with the requirements in § 273.12
....

Code of Federal Regulations 7 CFR § 273.12(a)(1)(ii) provides in relevant part:

Households are required to report all changes in household composition, such as the addition or loss of a household member.

Code of Federal Regulations 7 CFR § 273.12(a)(2) provides in relevant part:

Certified households must report changes within 10 days of the date the change becomes known to the household, or at the State agency's option, the household must report changes within 10 days of the end of the month in which the change occurred.

Code of Federal Regulations 7 CFR § 273.3 provides in relevant parts:

- (a) A household shall live in the State in which it files an application for participation No individual may participate as a member of more than one household or in more than one project area, in any month ... The State agency shall not impose any durational residence requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

DISCUSSION

The Movant petitioned the Board of Review for an Administrative Disqualification Hearing (ADH) to establish that the Defendant committed an IPV. The Movant argued that the Defendant committed an IPV of SNAP by intentionally misrepresenting information regarding the AG's member composition. The Movant requested the Defendant be disqualified from SNAP benefits for 12 months. The Defendant was notified of the ADH scheduling and failed to appear. Pursuant to the federal regulations, the hearing was held in the Defendant's absence.

Reliability of the Evidence

The Movant's evidence contained photographed copies of a Judgement Entry from the [REDACTED]. The evidence reflected that the Judgement Entry was 23 pages. However, only pages 1,2,5,9,10, and 23 were submitted as evidence. Further, the photographs were poor quality and difficult to read. The full conditions of the Judgement Entry cannot be discerned from the submitted pages. The Movant's burden of proof requires clear and convincing evidence, not a preponderance of the evidence. Without a reliable corroborating record of the conditions of the Judgement Entry, the reliability of the pages provided cannot be affirmed. Therefore, the submitted Judgement Entry was found to be unreliable.

Burden of Proof

The Movant had to prove by clear and convincing evidence that the Defendant intentionally made false or misleading statements, or misrepresented, concealed, or withheld facts to obtain SNAP benefits. The Movant asserted that the Defendant falsely reported Children [REDACTED] as members of her household. To prove the Defendant committed an IPV, the Movant had to prove by clear and convincing evidence that the Defendant included Children [REDACTED] in her AG when they did not live with her from November 2020 through December 2021.

During the hearing, the Movant's representative testified that two BVRF referrals were submitted due to an interruption in the Defendant's SNAP benefits. Although the submitted evidence corroborated a break in SNAP benefits, the ADH notice reflected that the Defendant had been overissued SNAP benefits from November 2020 through December 2021. No evidence was submitted to establish that a new notice had been issued to the Defendant that reflected a break in the proposed SNAP over-issuance period. Because the Movant's notice reflected the SNAP over-issuance period as November 2020 through December 2021, the Movant had to prove by clear and convincing evidence that the Defendant's misrepresentation of Children [REDACTED] as household members resulted in the Defendant receiving SNAP benefits from November 2020 through December 2021 that she was ineligible to receive.

AG Composition

The case comments reflect that the Defendant was approved for SNAP eligibility in June 2020 based on a four-person AG. During the hearing, the Movant's representative testified that the Defendant reported three children residing in the home. The case comments indicate that Defendant's June 2020 SNAP eligibility was partially based on a four-person AG and the Defendant's report of claiming three children as dependents on her tax filing.

The Defendant's June 2020 SNAP application was not provided as evidence. The Case Benefit Summary provided a list of active and excluded case members that included two children who were not Child [REDACTED]. The Case Benefit Summary did not reflect any evidence that Children [REDACTED] were listed as household members in June 2020. The Movant failed to demonstrate by clear and convincing evidence that the members of the Defendant's June 2020 four-person AG included Children [REDACTED]. The Movant failed to demonstrate by clear and convincing evidence that the Defendant misrepresented the composition of her household to receive SNAP benefits, beginning November 2020.

Pursuant to the evidence, the Defendant's AG had a break in SNAP benefit receipt. In July 2021, the Defendant applied for SNAP benefits for a three-person AG — that included the Defendant, [REDACTED] — and began receiving SNAP benefits on August 5, 2021.

The Case Benefit Summary provided a history of the Defendant's SNAP benefit issuance. The record indicated a decrease in the Defendant's AG's monthly SNAP issuance between October 2021 and November 2021. The submitted case comments only span through July 2021. No evidence was entered to account for the decrease or to exclude a client-reported decrease in the household composition as a potential cause. Because the alleged SNAP over-issuance period included October and November 2021, the Movant had to demonstrate by clear and convincing

evidence that the Defendant's AG was overissued SNAP benefits because the Defendant misrepresented the number of persons in the household for that period. While the Case Benefit Summary revealed the amount of SNAP issuance during the period, it does not clarify the number of AG members the SNAP issuance was based on or which household members were part of the AG for the period.

The submitted evidence clearly and convincingly demonstrated that the Defendant included Children [REDACTED] as members of her household in June 2021.

Intentional Program Violation

To be included in the Defendant's AG, Children [REDACTED] had to reside in West Virginia with the Defendant. The Defendant was required to notify the Movant, within ten days, if there were changes in the household composition. The Movant had to demonstrate by clear and convincing evidence that the Defendant misrepresented Children [REDACTED] as members of her household when she submitted her June 2021 SNAP application or failed to report changes in her household composition within ten days.

Although the children's school records reflected their school enrollment dates, residence, and guardians affiliated with the corresponding school enrollments, no evidence was submitted to verify what date the children began attending after each enrollment. No witnessed sworn statements, reliable court records, or other corroborating documents were submitted to verify the physical location of the children at the time of Defendant's July 2021 SNAP application. The policy and regulations require that children must be included in the AG of their natural parent if they reside together, even if they do not purchase and prepare food together. The CFR prohibits the state agency from imposing any durational residence requirements. No reliable evidence was submitted to rule out the possibility that Children [REDACTED] resided with the Defendant at the time of her July 2021 SNAP application.

The enrollment records indicate that Child [REDACTED] was residing with a different guardian and was enrolled in the [REDACTED] school system as of August 30, 2021. The evidence reflected that Child [REDACTED] was enrolled and residing elsewhere with a different guardian as of September 27, 2021. The Movant's Case Benefit Summary indicated that in October 2021, the Defendant's AG received a reduced amount of SNAP benefits. The Movant's evidence did not reveal what case actions were taken to the Defendant's SNAP case between July 2021 and December 2021. No case comments or case records were submitted to establish whether the Defendant reported a change in household composition. Therefore, the Defendant reporting a change in her AG cannot be ruled out. The Movant failed to prove by clear and convincing evidence that the Defendant failed to report changes in her household composition within ten days of the changes.

CONCLUSIONS OF LAW

- 1) An Intentional Program Violation (IPV) may be established when an individual makes false or misleading statements, misrepresents, conceals, or withholds facts to obtain SNAP benefits.

- 2) Households are required to report all changes in household composition, such as the addition or loss of a household member, within ten days of the change.
- 3) Because the submitted Judgement Entry from the [REDACTED] was incomplete, the conditions of the order cannot be affirmed, and the record was found to be unreliable.
- 4) The Movant had to prove by clear and convincing evidence that the Defendant misrepresented Children [REDACTED] as members of her household to receive SNAP benefits from November 2020 through December 2021.
- 5) The Movant's evidence clearly and convincingly demonstrated that the Defendant included Children [REDACTED] as members of her AG, beginning June 2021.
- 6) The Movant's evidence failed to clearly and convincingly prove that Children [REDACTED] were members of the Defendant's AG before June 2021.
- 7) The reliable submitted evidence failed to clearly and convincingly demonstrate that the Defendant failed to report changes in her household composition within ten days of the change.
- 8) The reliable submitted evidence failed to clearly and convincingly demonstrate that the Movant misrepresented Children [REDACTED] as members of her household to receive SNAP benefits from November 2020 through December 2021.

DECISION

It is the finding of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation to receive SNAP benefits from November 2020 through December 21, 2021.

ENTERED this 23rd day of May 2023.

Tara B. Thompson, State Hearing Officer

