



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin, III
Governor

Martha Yeager Walker
Secretary

July 31, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 29, 2009 for the purpose of determining whether or not an Intentional Program Violation occurred requiring a repayment of Supplemental Nutrition Assistance Program (SNAP) benefits.

In arriving at a decision, the State Hearings 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.

Eligibility for SNAP is based on current policy and regulations. These regulations provide that an Intentional Program Violations shall consist of 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, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp coupons. Individuals found to have committed an act of Intentional Program Violation will be ineligible for a specified time determined by the number of previous Intentional Program Violation disqualifications (Code of Federal Regulations - 7 CFR § 273.16).

The information which was submitted at your hearing was insufficient to prove your household consisted of anyone other than yourself and your children as reported to the Department.

It is the decision of the State Hearings Officer to **Reverse** the proposal of the Department to impose an Intentional Program Violation and repayment of SNAP benefits.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Board of Review
Lynn McCourt, Criminal Investigator

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

-----,

Defendant,

v.

Action Number: 09-BOR-1202

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing concluded on June 29, 2009 for ----- . This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on June 29, 2009.

II. PROGRAM PURPOSE:

The Program entitled Supplemental Nutrition Assistance Program (SNAP) is administered by the West Virginia Department of Health & Human Resources.

The purpose of SNAP is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

-----, Defendant

-----, Defendant's Ex-Husband

Lynn McCourt, Criminal Investigator

Presiding at the Hearing was Kristi Logan , State Hearing Officer and a member of the Board of Review.

This hearing was held by videoconference.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not an Intentional Program Violation occurred requiring a repayment of SNAP benefits.

V. APPLICABLE POLICY:

Code of Federal Regulations- 7 CFR § 273.16

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Appointment Letter
- D-2 Hearing/Grievance Record Information
- D-3 Request for an Administrative Disqualification Hearing
- D-4 Notification of Intent to Disqualify dated May 6, 2009
- D-5 Waiver of Administrative Disqualification Hearing signed May 13, 2009
- D-6 Combined Application and Rights and Responsibilities Forms dated July 9, 2002, February 13, 2003, August 5, 2003, February 4, 2004, August 3, 2004,
- D-7 Statements from -----and -----dated April 20, 2005
- D-8 Income Verification for ----- from [REDACTED] Inc.
- D-9 Income Verification for ----- from [REDACTED]
- D-10 Case Household Mailing Address Screen (ACMA) from Rapids Computer System
- D-11 Case Household Information Screen (ACCH) from Rapids Computer System
- D-12 Vehicle Registration Screens from Department of Motor Vehicles Data Exchange
- D-13 SNAP Claim Determination Forms
- D-14 WV Income Maintenance Manual § 1.2 E
- D-15 WV Income Maintenance Manual § 9.1 A
- D-16 WV Income Maintenance Manual § 10.3 EE
- D-17 WV Income Maintenance Manual § 20.2

Defendants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from Department of Health and Human Resources' Criminal Investigator, Lynn McCourt, on May 18, 2009. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and is recommending that the Defendant be disqualified from participation in SNAP for a period of one (1) year and a repayment of SNAP benefits received for which she was not eligible for.
- 2) The Defendant was notified by a Notification of Intent to Disqualify letter dated May 6, 2009 that the Department had reason to believe she intentionally violated the SNAP program by failing to report accurate household composition at review, resulting in an overpayment of SNAP benefits.
- 3) The Department claims that Defendant failed to report -----, father of her daughter -----, living in her household from July 2002 through July 2003 and again from January 2004 through August 2004. ----- had earnings which were required by policy to be counted in Defendant's eligibility determination for SNAP benefits.

The Department presented into evidence vehicle registration from the Department of Motor Vehicles' (DMV) data exchange system where ----- used Defendant's physical address of [REDACTED] WV for the registration of two (2) vehicles titled in February 2004 and June 2004 (D-12). ----- also used Defendant's physical and mailing address of [REDACTED] WV to renew his drivers' license in June 2004 (D-12).

Defendant's mailing address and phone number was also listed as -----'s with his employer, [REDACTED] where he was employed from January 2004 through June 2004 (D-9).

- 4) The Department obtained two (2) statements from individuals who stated ----- had lived with Defendant for several years. They read in pertinent parts (D-7):

I have lived at this address for seventeen years, -----lives across the road from me in a gray house, I believe she has lived across from me at least five years. -----, ----- and four children live in the home. They moved in together and all of them have lived together since they moved in. ----- works at [REDACTED] and he, ----- works at a coal mine. ----- wakes me up every morning starting his truck at 5:00 am. He drives a big truck (written by -----on April 20, 2005).

I have lived here for 33 years. ----- has lived at her current address for at least four or five years. ----- lives with a man named ----- . Since she has lived at this address ----- has lived with her. She has four children. My son manages her at her job at [REDACTED] ----- works and makes good money (written by -----on April 20, 2005).

- 5) Defendant testified that ----- did not live with her at that time. They did not live together until 2006, when they purchased a house together and eventually got married. Defendant moved to [REDACTED] WV around June 2002. Her daughter ----- was born July 2, 2002. ----- stayed with her a couple of days after her birth to help Defendant with her other children.

Defendant stated ----- worked until 6:00 am during that time so it would have been impossible for him to be at her house, starting his truck at 5:00 am as stated by -----.

Defendant also stated she was responsible for getting ----- son fired at [REDACTED] and felt her statement was made out of retaliation.

- 6) ----- testified that he did not have a permanent residence during that time. He lived with a friend and also with his father. He used Defendant's address to register his vehicles because DMV required a physical address. He would leave his truck down the road from Defendant's house for protection and ride to work with a friend. ----- denied staying the night with Defendant.

- 7) Code of Federal Regulations- 7 CFR § 273.16 states:

An Intentional Program Violation shall consist of 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, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp coupons.

VIII. CONCLUSIONS OF LAW:

- 1) In order for an Intentional Program Violation to be established, it must be shown by clear and convincing evidence that the Defendant intentionally made a false or misleading statement or withheld or concealed facts from the Department.
- 2) Testimony from Defendant and her ex-husband indicated he did not reside in her household during the time period in question and merely used her address as he did not have a permanent residence.
- 3) The Department failed to produce clear and convincing evidence that Defendant's ex-husband was residing in her home while she received SNAP benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to impose an Intentional Program Violation against Defendant and repayment of SNAP benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st day of July 2009.

Kristi Logan
State Hearing Officer