



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

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

September 29, 2009

RE: -----  
Action No: 09-BOR-1600

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 18, 2009 for the purpose of determining whether or not ----- committed an Intentional Program Violation.

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 the Supplemental Nutrition Assistance Program is based on current policy and regulations. These regulations provide that 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. 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 submitted at your hearing failed to establish -----'s intent to withhold information regarding her household's income.

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

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Board of Review  
Andrew Petitt, Criminal Investigator

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

-----,

**Defendant,**

**v.**

**Action Number: 09-BOR-1600**

**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 September 16, 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 September 16, 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 the Supplemental Nutrition Assistance Program (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 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

-----, Counsel for Defendant

Andrew Petitt, Criminal Investigator

Erika Young, Chairman, Board of Review (observing)

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 the Defendant committed an Intentional Program Violation.

**V. APPLICABLE POLICY:**

Code of Federal Regulations- 7 CFR § 273.16

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Combined Application Form and Rights and Responsibilities Form dated October 20, 2005
- D-2 Workers' Compensation Disbursement History for Brian Stuart
- D-3 Case Comments (CMCC) from RAPIDS Computer System
- D-4 Combined Application Form and Rights and Responsibilities Form dated November 30, 2004
- D-5 Statement from -----dated June 12, 2008
- D-6 Report of Investigation dated September 15, 2008 conducted by Andrew Petitt
- D-7 [REDACTED] County Circuit Court Order for -----dated April 15, 2009
- D-8 [REDACTED] County Circuit Court Order for ----- dated July 15, 2009
- D-9 WV Income Maintenance Manual § 20.2
- D-10 Code of Federal Regulations- 7 CFR § 273.16

**Defendant's 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, Andrew Petitt, on August 5, 2009. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) by failing to report Workers' Compensation income for a member of her household and is recommending she be disqualified from the SNAP program for a period of 12 months.
- 2) The Defendant completed a SNAP review on October 20, 2005. She reported her boyfriend, -----had moved into her household. No income for -----was reported and he was added to the Defendant's SNAP benefits (D-1 and D-3).
- 3) The Department obtained verification from Brickstreet Insurance that -----had been receiving Workers' Compensation income since 2003 of \$410.26 every two (2) weeks (D-2). The result of the Defendant and -----failure to report this income was an overpayment of SNAP benefits in the amount of \$1471 (D-6).

- 4) -----provided a statement to Andrew Petitt, Criminal Investigator for the Department, dated June 12, 2008 which read in pertinent parts (D-5):

In October 2005 I started receiving benefits in -----'s case. I worked at [REDACTED] and hurt my back and neck. I started receiving Workers Compensation in December '02 or December '03. I did not report my Workers Compensation Income to the Department because I needed help. My rent was \$410 a month and I had utilities. After paying my rent and utilities I did not have any money left over to pay for food, so I reported that my Workers Compensation had ended. I received my Workers Compensation check by mail. I sure [sic] ----- knew about my Workers Compensation Income because she would go with me to the Bank to cash my check. We used to have a checking account together at [REDACTED] National Bank.

- 5) The Department contends the Defendant had knowledge of -----Workers' Compensation income and intentionally withheld this information at her October 2005 SNAP review. The Defendant was aware of her responsibility to report accurate household information as indicated by her signature on the Rights and Responsibilities Forms (D-1 and D-4).
- 6) The Defendant testified that she and -----moved in together sometime in October 2005 and she had him added to her SNAP case. She knew -----had been receiving Workers' Compensation prior to them moving in together. -----told her his last check was dated June 24, 2004 and he was upset that it was for a reduced amount. She denied knowing he continued to receive Workers' Compensation income while they lived together.

The Defendant stated she was added to -----checking account at [REDACTED] Bank so she could get her checks cashed. They would go to [REDACTED] together, where their bank branch was located, and he would go to the bank while she shopped. She did not know that he was cashing his Workers' Compensation checks.

- 7) -----, counsel for the Defendant, argues the only evidence the Department has to support that the Defendant had knowledge of the Workers' Compensation income is -----statement. -----admitted to withholding this income from the Department prior to being added to Defendant's case, so it is reasonable that he also withheld this information from the Defendant.
- 8) 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 [SNAP] 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) The Department failed to produce any evidence supporting their claim that the Defendant had knowledge of -----income, only providing evidence of his receipt of the Workers' Compensation income.
- 3) The Department failed to establish the Defendant's intent to withhold information regarding her household's income.

### **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 the Defendant.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 29<sup>th</sup> day of September 2009.**

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**Kristi Logan  
State Hearing Officer**