



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O Box 1736
Romney, WV 26757

Joe Manchin III
Governor

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

November 10, 2009

Dear -----,

Attached is a copy of the findings of fact and conclusions of law on your Supplemental Nutrition Assistance Program (SNAP) Administration Disqualification hearing held November 5, 2009. The purpose of this hearing was to determine whether or not you intentionally committed an Intentional Program Violation (IPV)

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 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. (West Virginia Income Maintenance Manual §20.2 and Code of Federal Regulations- 7 CFR §273.16).

The information which was submitted at your hearing revealed that you intentionally withheld information about your son's income in order to received benefits for which you were not entitled.

It is the decision of the State Hearings Officer to Uphold the agency's proposal to implement a one (1) year SNAP penalty against you based on an Intentional Program Violation. Your penalty period will begin December 1, 2009 and continue for the next twelve (12) months.

Sincerely,

Eric Phillips
State Hearings Officer
Member, State Board of Review

cc: Board of Review
Sally Musick, Repayment Investigator

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

----- ,

Defendant,

v.

Action Number: 09-BOR-1606

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

Movant.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 10, 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 November 5, 2009.

II. PROGRAM PURPOSE:

The Program entitled Supplemental Nutrition Assistance Program 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:

Sally Musick, Repayment Investigator

Presiding at the Hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Defendant committed an intentional program violation and should be disqualified for one year from participation in the Supplemental Nutrition Assistance Program or SNAP.

V. APPLICABLE POLICY:

7 CFR § 273.16 USDA Code of Federal Regulations
Common Chapters Manual Chapter 700, Appendix A
West Virginia Income Maintenance Manual §1.2, 9.1.A.2.h and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp Claim Determination Worksheet from June 2008 through November 2008
- D-2 Combined Application and Review form dated June 3, 2008
- D-3 Request for Assistance form dated June 3, 2008
- D-4 Application for West Virginia School Clothing Allowance dated July 25, 2008
- D-5 West Virginia State Online Query (SSI Information Response)
- D-6 Computer Unearned Income Data Exchange Printout detailing SSI recipient information
- D-7 Rights and Responsibilities dated June 3, 2009
- D-8 West Virginia Income Maintenance Manual Chapter 1.2, 2.2
- D-9 West Virginia Income Maintenance Manual Chapter 9.1, 20.2
- D-10 Hearing Summary

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administration Disqualification Hearing on August 6, 2009. The Department contends that the Defendant committed an Intentional Program Violation (IPV) and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a twelve (12) month period.
- 2) The Administration Disqualification Hearing was originally scheduled for October 8, 2009. Notice of scheduled hearing was mailed to Defendant on September 1, 2009 via Certified Restricted Delivery Mail. This notice was returned to the Board of Review September 28, 2009. On October 5, 2009, the Board of Review was notified that Defendant had relocated to a different address and was a current recipient of SNAP benefits. Notice of rescheduled hearing for November 5, 2009 was mailed to Defendant on October 5, 2009 via regular mail delivery and was not returned to the Board of Review.
- 3) The hearing convened as scheduled at 11:00 a.m., and as of 11:20 a.m., the Defendant failed to appear. As set forth in the Code of Federal Regulations found at §7 CFR 273.16 (e) (4), and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 740.20), the hearing was conducted without the Defendant in attendance.

- 4) On June 3, 2008, Defendant applied for SNAP benefits. Exhibit D-2, Combined Application and Review Form, documents that the Defendant and his son, ----- age 17 were residing in the household and there was no income available to the household at the time of application. Exhibit D-3, the Request for Assistance, documents that at application the household had no monthly income and that household expenses averaged four hundred and twenty (420.00) dollars per month.
- 5) Exhibit D-7, the Rights and Responsibilities section of the application for SNAP benefits, certifies that all information relayed to the Department at the time of application is true and correct and the applicant accepts all responsibilities associated with the application for SNAP benefits. The Defendants signature appears on page 9 of documentation affirming his knowledge of all responsibilities related to his receipt of Departmental benefits.
- 6) The Department testified that the Defendant applied for West Virginia School Clothing Allowance, Exhibit D-4, on July 25, 2009 and listed no income for the household.
- 7) The Departments Repayment Investigator testified that in June 2009 the Department discovered that the Defendant's son had been receiving Supplemental Security Income (SSI) since February 2008. Exhibit D-5, indicates that Defendant is the payee for this income. The exhibit further documents that the Defendant's son was eligible for this income effective March 1, 2008 based on an application to the Social Security Administration dated February 11, 2008. Exhibit D-6, Computer Data Exchange printouts verifies that the Defendant's son was receiving a SSI gross payment amount of six hundred and thirty seven (\$637.00) dollars upon approval of his SSI benefit.
- 8) Exhibit D-7, the Rights and Responsibilities, was completed and signed by the Defendant on June 3, 2008. The Defendant marked "yes" to question #4 on the Food Stamp Program section of the form. This item states:

I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not receive Food Stamp benefits as follows: **First Offense**- one year; **Second Offense** – two years; **Third Offense** – permanently. In addition, I will have to repay any benefits received for which I was not eligible.

By signing this documentation the Defendant affirmed that he read all statements and any information he purported to the Department at the time of application was true and correct.

- 9) The Department submitted Exhibit D-1, Food Stamp Claim Determination, to establish that the Defendants inability to provide true and correct information at the application resulted in an overpayment of One Hundred and Thirty Three (\$133.00) dollars for the period of June 3, 2008 through November 2008.

- 10) West Virginia Income Maintenance Manual Chapter 1.2 indicates:

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.

- 11) West Virginia Income Maintenance Manual Chapter 2.2 indicates:

All SNAP AG's must report changes related to eligibility and benefit amount at application and redetermination.

Changes Acted On For SNAP AG's

a. Information Verified Upon Receipt

Action must be taken for all AG's when information is received from a source that is considered verified upon receipt. Verified upon receipt sources are not subject to independent verification and the provider is the primary source of the information. The only sources considered verified upon receipt are:

-BENDEX and SDX from SSA

- 12) West Virginia Income Maintenance Manual, Chapter 9.1 indicates:

Persons who have been found guilty of an IPV are disqualified as Follows:

- 1st Offense: 1 Year
- 2nd Offense: 2 Years
- 3rd Offense: Permanent

- 12) West Virginia Income Maintenance Manual, Chapter 20.2 indicates:

When an AG (benefit group) has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.

- 14) Common Chapters Manual 740.11.D states as follows:

Intentional Program Violation - For the purpose of determining through an Administrative Disqualification Hearing whether or not a person has committed an Intentional Program Violation, the following criteria will be used. 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 for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system access device.

VIII. CONCLUSIONS OF LAW:

- 1) Based on evidence presented during the Administration Disqualification Hearing, the Defendant provided inaccurate information regarding household income to the Department in order to receive Supplement Nutrition Assistance Program (SNAP) benefits for which he was not legally entitled. The Defendant's son's application for Supplemental Security Income (SSI) was completed in February 2008. The application for SSI was approved in March 2008 and the Defendant's son was entitled to receive Six Hundred and Thirty Seven (\$637.00) dollars. The Defendant applied for SNAP benefits in June 2008 and additionally applied for West Virginia School Clothing Allowance in July 2008. On both occasions, the Defendant withheld information concerning household income. This was clearly an intentional misrepresentation of the Defendant's situation.
- 2) The policy and regulations that govern SNAP benefits dictate that a program violation has occurred when an individual intentionally makes a false or misleading statement, or misrepresented, concealed or withheld facts relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp benefits.
- 3) There is clear and convincing evidence that the Defendant committed an intentional program violation as defined in the SNAP policy and regulations.
- 4) In accordance with Food Stamp policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first (1st) offense is one (1) year.
- 5) The Defendant is the only assistance group member subject to said disqualification penalty. The one year disqualification penalty will begin December 1, 2009 and run concurrently for the next 12 months.

IX. DECISION:

Intentionally making of false or misleading statements or misrepresenting facts to secure SNAP benefits constitutes a clear violation of the regulations. Based on evidence presented, I find the violation intentional.

The Departments proposal to apply a twelve (12) month disqualification is upheld.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of November 2009.

Eric L. Phillips
State Hearing Officer