



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

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

December 18, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification Hearing held December 16, 2009 for the purpose of determining whether or not you committed an Intentional Program Violation (IPV).

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.

Eligibility for SNAP is based on current policy and regulations. Some of these regulations state as follows: 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 submitted at the hearing showed that you intentionally provided false or misleading information about your household composition in order to receive SNAP for which you were not entitled. This is your first disqualification which will result in ineligibility for twelve (12) months.

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to apply a one (1) year SNAP disqualification penalty against you based on an Intentional Program Violation. Your penalty will begin February 1, 2010.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/-----, Kanawha DHHR

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

-----,

Defendant

v.

Action Number: 09-BOR-1819

**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 an Administrative Disqualification Hearing 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 hearing was convened on December 16, 2009.

II. PROGRAM PURPOSE:

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:

-----, State Repayment Investigator, Department Representative

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

Let the record reflect that ----- was notified of this hearing by registered restricted mail delivery on November 20, 2009 and she has failed to appear. The hearing was scheduled to begin at

10:00 a.m., however the Defendant called and the hearing was delayed until 11:00 a.m. to allow her time to arrive by bus service. At 11:20 a.m., she failed to appear. The hearing was held in her absence and a decision is being made based on the evidence presented by the Department.

This hearing was also previously scheduled for October 15, 2009 and November 17, 2009, but was continued on both occasions at the Defendant's request.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for one year from participation in 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 Code of federal Regulations §273.16
- D-2 Benefit Recovery Referral form dated July 29, 2009
- D-3 WV Income Maintenance Manual §1.2.E
- D-4 Combined Application Form dated January 7, 2008 and accompanying forms
- D-5 Combined Application Form dated May 12, 2008 and accompanying forms
- D-5a Combined Application Form dated June 6, 2008 and accompanying forms
- D-5b Combined Application Form dated December 19, 2008 and accompanying forms
- D-5c Emergency Assistance Application form and accompanying documents dated February 27, 2009
- D-6 Information from [REDACTED] County Schools
- D-7 Case Comments dated April 22, 2009
- D-8 WV Income Maintenance Manual Section 20.2
- D-9 Claim determination forms
- D-9a Claim Determination forms
- D-10 WV Income Maintenance Manual Section 2.2
- D-11 WV Income Maintenance Manual Section 20.6
- D-12 Notification letters to Defendant
- D-13 WV Income Maintenance Manual Section 20.2
- D-14 WV Income Maintenance Manual Section 20.2.E
- D-15 WV Income Maintenance Manual Section 20.2.F.2

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

1) A request for an Administrative Disqualification Hearing (ADH) was received by the Board of Review from the Department of Health and Human Resources (Department) on September 1, 2009. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and made a fraudulent statement or misrepresentation regarding her household composition in order to receive SNAP (formerly known as the Food Stamp Program), and is recommending that the Defendant be disqualified from participation in SNAP for a period of one (1) year.

2) On or about July 30, 2009 the Department sent the Defendant a Notification of Intent to Disqualify (D-12) form, indicating that the Department had reason to believe she intentionally violated a food stamp rule. The form also included the following:

Based on the evidence developed through our investigation, the agency believes that ----- intentionally violated the food stamp program by: frauding [sic] the Department by stating her daughter ----- [sic] ----- was living with her during January 2008 through May 09. The evidence to prove this allegation consists of school records and emergency [sic] contact information.

3) The Department presented evidence to show that the Defendant completed numerous applications (D-4, D-5, D-5a and D-5b) for SNAP at which time she indicated that her daughter, -----, lived with her. The numerous applications were dated January 7, 2008 (D-4), May 12, 2008 (D-5), June 6, 2008 (D-5a) and December 19, 2008 (D-5b), and show that the Defendant signed Rights and Responsibilities forms each time acknowledging her understanding of her responsibility to report accurate and truthful information and the penalties for failure to do so.

4) The Department verified (D-6) through school records documentation completed July 24, 2009 that the Defendant's daughter was living with her father at, -----, [REDACTED] WV [REDACTED] The information (D-6) was provided by the Clerk of [REDACTED] County Schools. Also attached was a student transcript from [REDACTED] High School (D-6) which shows that the child was enrolled in [REDACTED] Middle School during the years 2007, 2008 and 2009.

5) The Department Representative, -----, testified that a Department Supervisor spoke with -----at [REDACTED] Middle School and documented (D-7) the following pertinent information as an official record in its computer system on or about April 22, 2009:

SPOKE W/-----AT [REDACTED] MIDDLE WHO STATED THE CHILD IS AND ALWAYS HAS BEEN IN THE CUSTODY OF HER FATHER. SHE STATED SHE IS FAMILIAR W/ THE CHILD BECAUSE THE QUESTION OF WITH WHOM THE CHILD LIVES HAS BEEN AN ISSUE IN THE

PAST. REMOVED THE CHILD FROM THIS CASE AND SENT TO REPAYMENTS.

- 6) West Virginia Income Maintenance Manual §1.2 (E) states that it is the client's responsibility to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.

- 7) West Virginia Income Maintenance Manual § 20.2 (C) (2) states in pertinent part:

IPV's include making false or misleading statement, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.

The individual(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.

Once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV.

- 8) Common Chapters Manual 700, Appendix A, Section B, provides 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 benefits.
- 9) Common Chapters Manual 700, Appendix A, Section G, states that the State Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an Intentional Program Violation as defined in Section B of this Appendix.
- 10) The Defendant signed the Rights and Responsibilities form (D-6) on December 18, 2006 thereby acknowledging the following pertinent responsibilities:

4) 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 SNAP benefits as follows: First Offense – one year; Second Offense – two years; Third Offense – permanently.

48) I also understand that if I give incorrect or false information or if I fail to report changes that I am required to report, I may be required to repay any benefits I receive and I may also be prosecuted for fraud. I also understand that any person who obtains or attempts to obtain benefits from DHHR by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device can be charged with fraud.

49) I certify that all statements on this form have been read by me or read to me and that I understand them. I certify that all the information I have given is true and correct and I accept these responsibilities.

11) West Virginia Income Maintenance Manual §9.1.A.2.h states:

Intentional Program Violation (IPV)

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

- 1st Offense: 1 year
- 2nd Offense: 2 years
- 3rd Offense: Permanent

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern the Food Stamp program state that a Food Stamp 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.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 3) The Defendant clearly was aware of her responsibility to report accurate and truthful information, having previously completed numerous applications and Rights and Responsibilities forms indicated such.
- 4) The evidence clearly shows that the child, -----, does not live with her mother, the Defendant. The statement obtained from the individual at [REDACTED] Middle School supports that the child has never lived with her mother. The school records also support that the child lives with her father.
- 5) The evidence is clear in that the Defendant intentionally made false statements by claiming this child lived with her, and received SNAP for her from January 2008 through May 2009. The Defendant did not appear or provide any evidence to refute the Department's claims.
- 6) The Department was correct in its determination that the Defendant has committed an Intentional Program Violation by intentionally providing false or misleading information in order to receive SNAP.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**. The penalty will begin February 1, 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 18th Day of December, 2009

**Cheryl Henson
State Hearing Officer**