



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 4, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held May 19, 2009 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred.

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 (SNAP), formerly known as Food Stamp Program, 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 fails to demonstrate that you intentionally provided false and misleading information about your household composition in order to receive Food Stamp (SNAP) benefits for which you were not legally entitled.

It is the decision of the State Hearing Officer that an Intentional Program Violation was not committed by you.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Karen Crossland, SRI, DHHR

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

-----,

Defendant,

v.

Action Number: 08-BOR-1825

**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 4, 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 hearing was scheduled to convene on September 25, 2008 and again on January 14, 2009 but was rescheduled on both occasions at the request of the Defendant and convened on May 19, 2009.

II. PROGRAM PURPOSE:

The Program entitled Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp, is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The purpose of the SNAP Program 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 (Participated telephonically)
Sally Musick, State Repayment Investigator, DHHR (Participated telephonically)

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in the Food Stamp (SNAP) Program.

V. APPLICABLE POLICY:

7 CFR ' 273.16 USDA Code of Federal Regulations
WVDHHR Common Chapters Manual, Chapter 700, Appendix A
West Virginia Income Maintenance Manual ' 1.2, 9.1, & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

Exhibit-1	Food Stamp Claim Determination and Computation Sheets
Exhibit-2	Application and Rights and Responsibilities signed by the Defendant on 3/17/08
Exhibit-3	Statement from ----- (dated 5/4/08)
Exhibit-4	Court Order – Family Court of [REDACTED] County, West Virginia, Civil Action No. 00-D-121, Entered 8/30/05
Exhibit-5	West Virginia Income Maintenance Manual Chapter 1.2
Exhibit-6	West Virginia Income Maintenance Manual Chapter 9.1A
Exhibit-7	West Virginia Income Maintenance Manual Chapter 9.1G
Exhibit-8	West Virginia Income Maintenance Manual Chapter 20

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from the Department's State Repayment Investigator on November 5, 2008. The Department alleges that the Defendant has committed an Intentional Program Violation and is recommending that she be disqualified from participation in the SNAP Program for a period of one (1) year.
- 2) The Department contends that the Defendant provided false information on March 17, 2008 when she completed an application/review for SNAP benefits and reported that her son was living in her home. The Department submitted Exhibit-2, Combined Application and Review Form, accompanied by the DFA-RR-1 (Rights and Responsibilities) section signed by the Defendant on March 17, 2008. Page 1 of this exhibit indicates the Defendant reported that her son (Matthew) was living in the home and that he was to be included in the SNAP assistance group.

- 3) The Department submitted Exhibit 3 (Statement from ----) and Exhibit 4 (County Court Order) to show that the Defendant's son resides with his biological father more than 50% of the time. Exhibit 4 states "That the Respondent [----] shall have the majority of custodial allocation for the parties' child..." and correspondence from ---- (Exhibit-3) is consistent with the provisions of the court ordered custodial arrangement. The Department contends that the Defendant should be found to have committed an Intentional Program Violation because she failed to report that her son was not living in her home over 50% of the time.
- 4) The Defendant testified that while the court order indicates she is to only have custody of her son on the weekends (when attending school – Friday after school until Monday morning), she purported that she also has her son on Wednesday evenings. It was not disputed that the Defendant's child spends equal time (every other week) with both parents during the summer break as noted in the court order. The Defendant further testified that upon providing her son's visitation schedule to the Department worker, she was advised that her son could be included in the assistance group.
- 5) The Department's representative testified that there is no documentation on the application to specify if a child is reported to be residing in the home more than 50% of the time or if an applicant is asked this question. Moreover, there is no evidence, witness statements or case comments, to conclude whether this question was asked and/or the Defendant reported her son was residing with her more than 50% of the time.
- 6) The Department submitted Exhibit-1 (Food Stamp Claim Determination) to show that the Defendant received an overissuance of SNAP benefits during the period March 2008 through May 2008 as her son should not have been included in the AG.
- 7) West Virginia Income Maintenance Manual ' 9.1.A.1.b.1 states – A group of individuals who live together, and for whom food is customarily purchased and prepared together, is an AG [Assistance Group]. Customarily is used to mean over 50% of meals on a monthly basis.
- 8) West Virginia Income Maintenance Manual ' 9.1.A.1.b.2, states - Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent.

In the instance of shared custody, when the child is legally considered to reside with each parent equal amounts of time (50/50), the parents must decide where the child "lives." If no one is receiving any benefits from the Department for the child, it is assumed that the living arrangements are not questionable and the child is added to the AG that wishes to add him. If the child is already listed in another AG or the other parent wishes to add the child to his AG, the parents must agree as to where the child "lives" and, ultimately, to which AG he is added. Where the child receives the majority of his meals is not relevant.

- 9) West Virginia Income Maintenance Manual ' 1.2 (E):
The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.

- 10) West Virginia Income Maintenance Manual ' 20.2:
When a 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.
- 11) West Virginia Income Maintenance Manual ' 20.2 (C) (2):
Once an IPV (Intentional Program Violation) is established a disqualification penalty is imposed on the AG (assistance group) members who committed the IPV. The penalties are as follows: (' 9.1, A, 2, h) 1st Offense: 1 year (Disqualification)
- 12) West Virginia Department of Health and Human Resources, 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.
- 13) West Virginia Department of Health and Human Resources, Common Chapters Manual, Chapter 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.

VIII. CONCLUSIONS OF LAW:

- 1) The regulations that govern the SNAP (Food Stamp) program state that an Intentional 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 (SNAP) benefits
- 2) The determination of an Intentional Program Violation must be based on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an Intentional Program Violation.

- 3) The evidence submitted in this case fails to meet the “clear and convincing” standard. While the court order clearly states the child’s father shall have the “majority of custodial allocation,” it is unclear if the Defendant was advised that her son had to have more than 50% of his meals in her home in order for him to be included in the SNAP AG. In the absence of any compelling evidence to the contrary, case comments or direct witness testimony from the worker who took the Defendant’s application, it is neither clear nor convincing that the Claimant intentionally provided false or misleading information.
- 4) Based on the evidence, a SNAP (Food Stamp) disqualification cannot be applied to the Defendant’s case.

IX. DECISION:

The Agency’s proposal to apply a SNAP (Food Stamp) disqualification is **reversed**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of June, 2009.

**Thomas E. Arnett
State Hearing Officer**