



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review

Joe Manchin III
Governor

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

December 3, 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 17, 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 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 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 Stat 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 regarding your unemployment income in order to receive 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 base on an Intentional Program Violation. Your penalty period will begin January 1, 2009 and continue for the next twelve (12) months.

Sincerely,

Eric Phillips
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
-----, Repayment Investigator

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

-----,

Defendant,

v.

Action Number: 09-BOR-1952

**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 December 3, 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 17, 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 household who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

-----, Defendant
-----, Defendant's wife
-----, Repayment Investigator
-----, Northern Repayment Investigator Unit Supervisor

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 or not 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 Combined Application and Review Form, Rights and Responsibilities, and computer printouts of case comments for SNAP application dated February 24, 2009.
- D-2 Application for Low Income Energy Assistance Program (LIEAP) dated February 24, 2009 and Combined Application and Review Form dated March 2, 2009
- D-3 Computer printout [REDACTED] Unemployment Income
- D-4 Combined Application and Review Form, Rights and Responsibilities, and Verification Checklist for recertification for SNAP benefits dated July 14, 2009.
- D-5 Combined Application and Review Form, Rights and Responsibilities, and computer printouts of case comments for SNAP reapplication dated August 20, 2009.
- D-6 Food Stamp Claim Determination
- D-7 Client notifications dated February 25, 2009, March 3, 2009, and March 7, 2009
- D-8 Waiver of Administrative Disqualification Hearing
- D-9 West Virginia Income Maintenance Manual Chapter 1.2, 2.2, 9.1
- D-10 West Virginia Income Maintenance Manual Chapter 20.2 and Common Chapters 740-740.1
- D-11 Hearing Summary

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administration Disqualification Hearing on October 5, 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. The Department notified the Defendant of their intent to pursue the IPV, with Exhibit D-8 Waiver of Administrative Disqualification Hearing and the Defendant acknowledged receipt of documentation requesting his right to an Administrative Disqualification Hearing.
- 2) On February 24, 2009, both Defendant and his wife applied for SNAP benefits. Exhibit D-1, Combined Application and Review Form documents that the Defendant reported at the loss of his employment and that he was awaiting approval of unemployment compensation benefits from the State of [REDACTED]. The Rights and Responsibilities section of the SNAP application informed the Defendants that they were to notify the Department when total household income exceeded the SNAP Gross income limit. This section of the application informs the individual

that this information must be reported to the Department by the 10th day of the month after any increases in income. It shall be noted that pages were missing from exhibit, but the Claimant certified that all statements on the Rights and Responsibilities Form were read by the Defendants and both signatures appear on page 9 of the documentation, affirming their knowledge of all responsibilities related to their receipt of Departmental benefits.

- 3) The Department submitted evidence to show that the Defendant's wife applied for the Low Income Energy Assistance Program on March 2, 2009. Exhibit D-2, identifies that she reported no income to the Department and certified that all information reported was true and correct to the best of their knowledge. Exhibit D-2, computer printout of case comments associated with application, verifies that the Defendant's wife reported that the household received no income and that the Defendant was still awaiting a decision from the [REDACTED] Unemployment Commission.
- 4) On July 14, 2009, the Defendant completed a recertification for his SNAP benefits, Exhibit D-4. At the time of recertification, the Defendant reported the receipt of his unemployment compensation and a verification checklist was issued to the Claimant to verify the receipt of this income. The Department received faxed information from the [REDACTED] Unemployment Commission documenting that the Defendant was in receipt of \$403.00 per week in unemployment benefits. Total monthly income for the household was listed as \$1,732.90; this income was considered excessive and resulted in the denial of the Defendants SNAP redetermination.
- 5) On August 20, 2009, the Defendant reapplied for SNAP benefits, Exhibit D-5. The Defendant reported no household income and further reported the termination of unemployment income to the Department. The Department approved SNAP reapplication and issued reporting requirements to the Defendant.
- 6) -----, Repayment Investigator, testified that the Department was notified by the [REDACTED] Unemployment Commission that the Defendant began receiving unemployment compensation payments on February 27, 2009. These payments ran concurrently through August 31, 2009. Exhibit D-3, [REDACTED] Unemployment Commission printout, shows that the Defendants received \$378.00 for his initial payment and received an increase to \$403.00 weekly starting March 4, 2009 due to the approval of the American Recovery and Reinvestment Act of 2009. ---further testified, that the Claimant was informed to report when his income increased to more than \$1517.00. This information was verified in Exhibit D-7, Client notifications. This notifications document in pertinent part:

“You must contact this office and report if your total household income increases to more than \$1517.00 per month.”

-----stated that the Defendants' failure to provide true and correct information at his application for benefits resulted in an overissuance of SNAP benefits in the amount of \$1602.00; this information was documented in Exhibit D-6 Food Stamp Claim Determination.

- 7) The Defendant stated that he was employed as an iron worker and has been employed until his recent layoff. The Defendant purported that he had to file unemployment in West Virginia and [REDACTED] and the process was long and tedious. The Defendant testified that he did not intentionally mislead the Department in order to receive SNAP benefits, and that he was

unaware of the State of West Virginia policies concerning SNAP benefits. The Defendant stated he believed that the household was under the income guidelines upon receipt of his unemployment compensation and additional income received through the American Recovery and Reinvestment Act placed his household over the income limit. The Defendant disagreed with the Departments calculations regarding his household income stating that he does not receive the amount used to determine his food stamp allotment. The Repayment Investigator Supervisor explained to the Defendant the use of multipliers when considering income attributed to the SNAP program, and cleared any confusion of the matter.

- 8) 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.

- 9) West Virginia Income Maintenance Manual Chapter 2.2 states in pertinent part:

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

1. Limited Reporting

Once approved, all AG's must report when the total gross earned and unearned income of the AG and all other individuals who reside with the AG exceeds the AG's gross income limit. This must be reported no later than the 10th calendar day of the month following the month in which the change occurs.

No other changes are made for these AG's unless the information is reported by an AG member, comes from a source which is verified upon receipt, or from a source which is considered reported.

- 10) 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

- 11) 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.

- 12) 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) 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.
- 2) Evidence presented during the Administrative Disqualification Hearing revealed that the Defendant was not aware of his approval of unemployment benefits at his application dated February 24, 2009. However, the Defendant received his initial unemployment benefit on February 27, 2009 and subsequently applied for Low Income Energy Assistance on March 2, 2009. At the time of said application, the Defendant's wife knowingly and intentionally withheld information regarding the receipt of unemployment income purporting to the Department that the household had no income. Additionally, the Defendant made false statements to the Department on his August 20, 2009 reapplication for benefits when he contended that his unemployment income had terminated when in fact, the Defendant received unemployment benefits in that month and continues to receive said benefit.
- 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 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 January 1, 2010 and run concurrently for the next 12 months.

IX. DECISION:

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

The Departments proposal to apply a twelve (12) month disqualification penalty 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 December 2009.

Eric L. Phillips
State Hearing Officer