



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

Martha Yeager Walker
Secretary

July 16, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 22, 2009 for the purpose of determining whether or not an Intentional Program Violation occurred requiring an repayment of Supplement Nutrition Assistance Program (SNAP) benefits.

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 SNAP 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. When an Assistance Group has received more SNAP benefits than it was eligible for, corrective action is taken by establishing a repayment claim (West Virginia Income Maintenance Manual § 20.2 and Code of Federal Regulations - 7 CFR § 273.16).

The information which was submitted at your hearing failed to demonstrate a willful intention to misrepresent your assets. However, as your assets exceeded the allowable limit for the SNAP program, you are required to repay SNAP benefits received for which you were not eligible for.

It is the decision of the State Hearings Officer to **Reverse** the proposal of the Department to impose an Intentional Program Violation and **Uphold** the proposal of a repayment of SNAP benefits.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Board of Review
Teresa Smith, Criminal Investigator

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

-----,

Defendant,

v.

Action Number: 09-BOR-718

**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 22, 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 June 22, 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 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 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

-----, Defendant's Son

Teresa Smith, Criminal Investigator

This hearing was held by videoconference.

Presiding at the Hearing was Kristi Logan , State Hearing Officer and a member of the Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not an Intentional Program Violation occurred requiring a repayment of SNAP benefits.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 1.2 E, 11.3, 11.4 C and 20.2
Code of Federal Regulations- 7 CFR § 273.16

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1a Combined Application Form and Rights and Responsibilities Form dated January 23, 2006
- D-1b Combined Application Form and Rights and Responsibilities Form dated June 1, 2006
- D-1c Combined Application Form and Rights and Responsibilities Form dated November 28, 2006
- D-2 Account Verification from BB&T
- D-3 Approval Notification Letter dated January 24, 2006
- D-4 SNAP Claim Determination Form
- D-5 Notification of Intent to Disqualify dated December 4, 2008
- D-6 WV Income Maintenance Manual § 1.2, 1.4, 9.1, 11.1, 11.3, 11.4, 20.2 and Common Chapters Manual § 740.10 - 740.11

Defendants' 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, Teresa Smith, on May 18, 2009. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and is recommending that the Defendant be disqualified from participation in SNAP for a period of one (1) year and a repayment of SNAP benefits received for which he was not eligible for.
- 2) The Defendant was notified by a Notification of Intent to Disqualify letter dated December 4, 2008 that the Department had reason to believe he intentionally violated the SNAP

program by failing to report assets at review (D-5). The result was an overpayment of \$1710 in SNAP benefits (D-4).

- 3) Defendant had his SNAP benefits reviewed June 1, 2006 and again on November 28, 2006. Defendant reported that he had no assets (D-1b and D-1c). The Department verified with BB&T bank that Defendant had a checking account and 2 Certificates of Deposit (CD). The first CD was purchased on March 3, 2006 and had a balance as of April 2007 of \$5369.81. The second CD was purchased on September 27, 2006 and had a balance as of April 2007 of \$5313.25. BB&T indicated Defendant had access to the monies in these CDs (D-2).
- 4) The Department contends that Defendant failed to report the CDs at his June 2006 and November 2006 SNAP reviews as required by policy. The result was an overpayment of SNAP benefits from July 2006 – June 2007 of \$1710.
- 5) Defendant testified that the two (2) CDs actually belonged to his son, ----- . ----- gave him approximately \$10,000 - \$12,000 to hold for him. Defendant stated his son wanted to keep this money from his girlfriend. Defendant eventually deposited the money in the CDs.

Defendant stated he never thought of the money in the CDs as his money which is why he never reported it to the Department. He knows now that he should have reported it.

- 6) ----- testified that he would give money to his dad periodically so that his girlfriend and her mother would not spend it. His dad put the money into CDs for him. He trusted his dad not to spend his money and to keep it safe for him.
- 7) WV Income Maintenance Manual § 1.2 E states:

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. When the client is not able to provide the required verification, the Worker must assist him. The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions:

- Denial of application
- Closure of the active Assistance Group (AG)
- Removal of the individual from the AG
- Repayment of benefits
- Reduction in benefits

- 8) WV Income Maintenance Manual § 11.3 states:

To be eligible for programs administered by the Division of Family Assistance (DFA), the total amount of countable assets cannot exceed the amounts which are listed in the following chart:

SNAP

\$2,000, all AGs except as listed below

\$3,000, at least one AG member is over age 60 or disabled, regardless of the AG size

9) WV Income Maintenance Manual § 11.4 C states:

List of Countable Assets [for SNAP]

Bank Accounts and CDs

The amount deposited, plus any accrued interest, minus any penalties imposed for early withdrawal, is counted as an asset. Some funds held in CD's cannot be withdrawn prior to maturity under any circumstances. In this situation, the certificate is not an asset until the first month after it matures.

10) WV Income Maintenance Manual §20.2 states:

When an AG has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or an Intentional Program Violation (IPV) claim. The claim is the difference between the coupon entitlement of the AG and the coupon allotment the AG was entitled to receive.

11) 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) Credible testimony from Defendant and his son revealed that although the CDs were in Defendant's name, the money belonged to and was considered by both to be his son's. With the understanding that Defendant was holding his son's money for safekeeping, he did not report the asset. Defendant did not intentionally withhold information regarding his assets from the Department.
- 3) However, according to policy, when an overpayment of SNAP benefits has occurred, a repayment is established. While Defendant thought of the CDs as his son's asset, he had full access to the money which exceeded the allowable asset limit for SNAP. Defendant will be required to repay the overpayment of SNAP benefits of \$1710.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to impose an Intentional Program Violation and **uphold** the proposal of the Department to impose a repayment claim of \$1710.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th day of July 2009.

Kristi Logan
State Hearing Officer