



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

May 26, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Supplemental Nutrition Assistance Program (SNAP, formerly Food Stamp) Administrative Disqualification Hearing held May 7, 2009 for the purpose of determining whether or not an Intentional Program Violation (IPV) was committed by you.

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 benefits 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 benefits. 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 revealed 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 committed by you and a disqualification penalty of one (1) year will be applied. This disqualification will begin effective July 1, 2009.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review
Teresa Smith, SRI, DHHR

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

-----,

Defendant,

v.

Action Number: 09-BOR-721

**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 May 26, 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 convened on May 7, 2009.

II. PROGRAM PURPOSE:

The Program entitled Food Stamps 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 / **Food Stamp 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:

Jan Kinser, State Fraud Investigator, DHHR

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
Common Chapters Manual Chapter 700, Section 740
West Virginia Income Maintenance Manual ' 1.2, 2.2, 9.1, 10.4 & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1	Combined Application and Review Form (CAF) & the Rights and Responsibilities (DFA-RR-1) signed by the Defendant on 6/10/08
DHS-2	Final Order, Civil Action No. 07-D-65, In the Family Court of [REDACTED] County, West Virginia, Entered on 4/24/08.
DHS-3	Food Stamp Claim Determination for 6/9/08 through 9/30/08
DHS-4	Notification of Intent to Disqualify (IG-BR-44a) and Waiver of Administrative Disqualification Hearing (IG-BR-44)
DHS-5	West Virginia Income Maintenance Manual Chapter 1.2, 1.4, 9.1A.2.h and 20.2

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 February 18, 2009. The Department contends that the Defendant has committed an Intentional Program Violation and is recommending that she be disqualified from participation in the Food Stamp (SNAP) Program for a period of one (1) year.
- 2) Notification of the May 7, 2009 Administrative Disqualification Hearing was mailed to the Defendant on April 1, 2008 via certified, restricted delivery, mail. The Defendant acknowledged receipt of the hearing notice by her signature dated April 15, 2009 on the certified return receipt.
- 3) The hearing convened as scheduled at 10:30 a.m., and as of 10:45 a.m., the Defendant failed to appear. As set forth in regulations [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) The Department contends that the Defendant provided false and misleading information on her June 10, 2008 application for Food Stamp (SNAP) benefits when she reported that her two children were residing in her home. The Department submitted Exhibit DHS-1, Combined Application and Review Form (CAF), bearing the Defendant's signature on June 10, 2008. This document confirms that the Defendant reported her two sons were in her home and that she requested both of her sons be included in the Food Stamp (SNAP) benefit group.
- 5) The Department submitted Exhibit DHS-2, a Final Order from the Family Court of [REDACTED] County, West Virginia, Civil Action No. 07-D-65, Entered of Record April 24, 2008, wherein it is Ordered, Adjudged, and decreed that – The Respondent, the two boys' biological father, shall be deemed the custodial parent for purposes of federal and state statutes that require such designation. The Final Order goes on to state – "Respondent's Proposed Permanent Shared Parenting Plan, filed January 8, 2008, a copy of which is attached hereto as Exhibit A, is hereby adopted as a permanent parenting plan and made a part of this record as if fully set forth herein."

The Respondent's Proposed Permanent Shared Parenting Plan notes under #5 (Residential Schedule):

The parties anticipate that the parenting times will be liberal and by mutual agreement of the parties. In the event the parties are unable to agree, the Mother shall be entitled to parenting time each Sunday from noon until Monday evening at 6:00 o'clock p.m. In addition, the Mother shall be entitled to parenting time each Thursday from noon until 7:00 o'clock p.m. provided, however, that once each child enters school on a full time basis, said schedule shall be modified to Thursdays from 4:00 o'clock p.m. until 7:00 o'clock p.m. The Fathers parenting time shall be at all other times not provided herein.

- 6) Department's Exhibit DHS-1 includes the DFA-RR-1, Rights and Responsibilities form completed and signed by the Defendant June 10, 2008. The Defendant marked "yes" to item #4 which 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 the DFA-RR-1, the Defendant certified that she read, understood, and accepted the Rights and responsibilities and that all of the information she provided was true and correct.

- 7) Exhibit DHS-3 (Food Stamp Claim Determination) was submitted to show that by providing false and misleading information about her household composition, the Defendant received \$919 in Food Stamp benefits during the period 6/9/08 - 9/30/08 for which she was not legally entitled.

- 8) West Virginia Income Maintenance Manual ' 10.4:
This section contains policy relating income disregards and deductions and to computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and the number in the benefit group {emphasis added}.
- 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) 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 the Food Stamp program state 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) The evidence reveals the Defendant provided false and misleading information about her household composition. In the absence of any evidence to the contrary, this clearly establishes intent.

- 3) There is clear and convincing evidence that the Defendant committed an intentional program violation as defined in the Food Stamp 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 time offense is twelve months (one year).
- 5) Only the Defendant is subject to this disqualification. The 1-year disqualification will begin effective July 1, 2009.

IX. DECISION:

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

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th Day of May, 2009.

**Thomas E. Arnett
State Hearing Officer**