



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 20, 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 on May 5, 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 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.

The regulations that govern the SNAP Program state 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 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 made a false or misleading statements about your employment/income in order to receive SNAP benefits for which you were not entitled.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to apply a two (2) year SNAP (Food Stamp) disqualification penalty against you based on an Intentional Program Violation.

Sincerely,

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

pc: Erika H. Young, Chairman, Board of Review
Sally Musick, SRI, DHHR

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

-----,

Defendant,

v.

Action Number: 09-BOR-850

**West Virginia Department of
Health and Human Resources,**

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 20, 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 5, 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 **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:

-----, Defendant
Sally Musick, State Repayment Investigator, DHHR

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

IV. QUESTION(S) 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 Supplemental Nutrition Assistance (Food Stamp) Program, SNAP.

V. APPLICABLE POLICY:

7 CFR ' 273.16 USDA Code of Federal Regulations

Common Chapters Manual, Chapter 700

West Virginia Income Maintenance Manual ' 1.2, 1.4, 9.1, 10.3, 10.4 & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1	ES-FS-5's, Food Stamp Claim Determination for period 9/9/09 through 2/09
DHS-2	Combined Application and Review Form (CAF) – dated 9/9/08
DHS-3	IFM-5b (Employment Verification Form) dated 2/18/09 from [REDACTED]
DHS-4	DFA-RR-1, Right and Responsibilities, signed by ----- on 9/9/08
DHS-5	West Virginia Income Maintenance Manual Chapter 1.2 and 2.2
DHS-6	West Virginia Income Maintenance Manual Chapter 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 March 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 the Supplemental Nutrition Assistance Program, hereinafter SNAP (formerly Food Stamp Program), for a period of two (2) years as this is the Defendant's second IPV.
- 2) The Department contends that the Defendant intentionally violated the SNAP Program regulations by failing to report employment/income when she completed a SNAP application on September 9, 2008. Exhibit DHS-2 confirms on pages 3 and 4 that the Defendant reported that she was not employed.
- 3) Exhibit DHS-3, Employment Verification Form (ifm-5b) completed by Donna Wetzel, HR Assistant at [REDACTED] indicates the Claimant was hired on 9/6/08 (three days prior to completing the SNAP application).

- 4) The Department contends that by intentionally withholding information about her employment/income, the Defendant received \$627 in SNAP benefits during the period September 9, 2008 through February 28, 2009 for which she was not legally entitled (see Exhibit DHS-1 – Food Stamp Claim Determination).
- 5) The Claimant purported that she turned in every check stub to the SNAP E&T Worker since she started work in September 2008. She understood that she was required to turn in verification of work hours, at a minimum of 20 hours per week, in order to remain eligible for SNAP benefits. The Claimant acknowledged she would have been a new employee when the SNAP application was completed but that she did not intentionally withhold information and that she probably just forgot.
- 6) The Department's representative reported that SNAP E&T and the Department's workers monitor different areas of eligibility and cooperation. SNAP E&T workers monitors work participation requirements only and would likely not share information with the Department about income. This is the recipient's responsibility.
- 7) The Department submitted the Rights and Responsibilities form (Exhibit DHS-7) that was completed and signed by the Defendant on September 9, 2008. The Defendant marked "yes" to item #4 on this form, 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.

- 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 {emphasis added} and the number in the benefit group.
- 9) West Virginia Income Maintenance Manual § 10.3 confirms that earned income must be considered when determining Food Stamp eligibility and benefit amount.
- 10) 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.

- 11) West Virginia Income Maintenance Manual ' 20.2:
When a AG (assistance 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) 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)
- 13) Common Chapters Manual §740.11.D. 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.
- 14) Policy found in Common Chapters Manual §740.22.M (Decision) states – The Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence that demonstrates that the defendant committed, and intended to commit, Intentional Program Violation as defined in Section 740.11 of this Chapter. The Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing. In rendering a decision, the Hearing Officer shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and court orders. The decision shall include reference to all pertinent law or policy. If the Hearing Officer rules that the defendant committed an Intentional Program Violation, he or she will include the length and the beginning date of the disqualification penalty.

VIII. CONCLUSIONS OF LAW:

- 1) The regulations that govern the SNAP Program state that a SNAP (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 facts in this case do not support a finding of intent. While the evidence clearly indicates the Defendant failed to report she obtained new employment during her application on September 9, 2008, the Claimant provided SNAP E&T with weekly employment verification (pay stubs) in order to remain compliant with work participation rates - This action is clearly inconsistent with an individual who is attempting to withhold or mislead the Department in order to receive SNAP benefits for which she is not legally entitled.
- 3) Whereas the evidence to establish intent is not clear and convincing, a SNAP disqualification period cannot be applied to the Defendant's case.

IX. DECISION:

The Agency's proposal to apply a two (2) year SNAP disqualification is **reversed**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of May, 2009.

**Thomas E. Arnett
State Hearing Officer**