



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 18, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the SNAP Administrative Disqualification Hearing held April 28, 2009 for the purpose of determining whether 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.

Eligibility for SNAP, formerly known as the 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, Chapter 20.2 and Code of Federal Regulations 7 CFR ' 273.16)

Information submitted at the hearing reveals that you intentionally provided false and misleading information about your household composition in order to receive SNAP benefits for which you were not 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. Your disqualification from SNAP will begin effective October 1, 2009.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Marshall Daniels, Repayment Investigator

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

-----,

Defendant,

v.

Action Number: 09-BOR-855

**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 August 18, 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 April 28, 2009.

II. PROGRAM PURPOSE:

The purpose of SNAP, formerly known as 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:

Marshall Daniels, Repayment Investigator

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION 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 SNAP.

V. APPLICABLE POLICY:

7 CFR §273.16 Code of Federal Regulations
Common Chapters Manual, Chapter 700
West Virginia Income Maintenance Manual, Chapter 20.2; Chapter 9.1.A.2.h

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Benefit Recovery Referral Screen Print
- D-2 West Virginia Department of Health and Human Resources Client Placement History Report
- D-3 Combined Application and Review form, dated June 21, 2007
- D-4 Application for West Virginia Clothing Allowance, dated July 26, 2007
- D-5 Combined Application and Review form, dated January 4, 2008
- D-6 Food Stamp Claim Determination form
- D-7 Food Stamp Claim Calculation sheets
- D-8 West Virginia Income Maintenance Manual, Chapter 8.2
- D-9 West Virginia Income Maintenance Manual, Chapter 20.2
- D-10 West Virginia Income Maintenance Manual, Chapter 20.2.C.2
- D-11 West Virginia Income Maintenance Manual, Chapter 9.1.A.2.h

VII. FINDINGS OF FACT:

- 1) The Department is alleging an act of Intentional Program Violation, or IPV, in the Defendant's case, due to incorrect household composition reported during multiple applications for SNAP, formerly known as the Food Stamp Program.
- 2) The hearing convened as scheduled at 2:00 p.m., and as of 2:15 p.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, 740.20), the hearing was conducted without the Defendant in attendance.
- 3) The Code of Federal Regulations, 7 CFR §273.16(c), defines an IPV as:
 - (c) Definition of intentional Program violation. 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 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).

- 4) The Department presented the Combined Application and Review forms from the Defendant's June 21, 2007 (Exhibit D-3) and January 4, 2008 (Exhibit D-5) application interviews. An application for West Virginia Clothing Allowance (Exhibit D-4) from July 26, 2007 was additionally presented, because circumstances reported for this program potentially affect ongoing SNAP eligibility. These forms were signed by the Defendant. All forms list the Defendant's son in her household.
- 5) The Department obtained internal verification (Exhibit D-2) that the Defendant's son was residing in the West Virginia Children's Home from June 2007 through June 2008.
- 6) The Department presented policy (Exhibit D-8) showing that to be eligible for SNAP, an individual must not be a resident of a public institution. The West Virginia Income Maintenance Manual, Chapter 8.2, states, in pertinent part (emphasis added):

8.2 RESIDENCE

To be eligible to receive benefits, the client must meet the eligibility requirement of residence.

The client must live within the borders of West Virginia. Intent to remain permanently in West Virginia is not a requirement, although the client must reside in the State for purposes other than vacation. A time limit cannot be set for how long the client must live in West Virginia. The client cannot be required to maintain a permanent or fixed dwelling.

An individual remains a resident of the former state until he arrives in West Virginia with the intention of remaining indefinitely. Therefore, intent to establish or abandon residency must be known before the state of residence is determined.

A. FOOD STAMP BENEFITS

1. Determining State Of Residence/Movement Between States

NOTE: If the Food Stamp assistance group is Categorically Eligible, the residency requirement is considered met. See Chapter 1 for more information about Categorical Eligibility.

When an individual, who is receiving Food Stamp benefits in another state, establishes residence in West Virginia and applies for benefits the Worker must determine when Food Stamp benefits in the other state were stopped. The individual is eligible in West Virginia for the month following the month he last received benefits in the former state of residence, if otherwise eligible.

1. Institutional Status

An individual must not be a resident of a public or private institution. These are defined as follows:

Public Institution: Institution which provides shelter, custody and care and for which a governmental unit has responsibility or exercises administrative control.

Private Institution: Non-governmental institution which provides shelter, custody and care and which is required by State law to have a license to operate.

The individual is considered a resident of an institution when the institution provides the majority of their meals, which is defined as over 50% of three meals daily, as part of the institution's normal services, and the institution has not been authorized to accept Food Stamp benefits.

NOTE: A school dormitory is considered an institution. Therefore, any student who resides in a school dormitory and receives the majority of his meals from the institution's meal plan is ineligible to participate in the Food Stamp Program. This includes, but is not limited to, colleges and military and boarding schools, even when the student returns home for weekends. See the exemptions below for those who do not receive the majority of their meals from the institution.

The following groups are exempt from this policy:

- Narcotic addicts or alcoholics who reside at a facility or treatment center under the supervision of a drug or alcoholic treatment and rehabilitation program. See Chapter 14 for specific instructions for these groups.
- Individuals who reside in a Group Living Facility (GLF). See Chapters 9 and 14 for the definition of a GLF and for instructions regarding which residents of a GLF qualify.
- Residents of shelters for battered women and their children. The facility must be a public or private non-profit facility that exclusively serves battered women and their children or, if the shelter also serves other groups of individuals, a portion of the facility must be set aside, on a long-term basis, to shelter battered women and children. In addition, the facility must be a residence, not simply a place to eat meals. See Chapters 9 and 14.
- Residents of institutions who do not receive their meals from the institution, but who purchase and prepare their own food, or participate in a delivered meals program or a communal dining program are eligible, if they meet all other eligibility requirements. This includes those students who reside in school dormitories with optional meal plans and do not receive the majority of their meals from the institution.

- Residents of federally-subsidized housing for the elderly, built under either Section 202 of the Housing Act of 1959 or Section 236 of the National Housing Act qualify, if otherwise eligible.

- Residents of public or private non-profit shelters for homeless persons qualify, if otherwise eligible. See Chapter 14.

- 7) The Department presented documentation (Exhibit D-6) showing the calculation of the SNAP claim resulting from the incorrectly counted household composition in the Defendant's case. A claim was determined from July 2007 through April 2008 in the amount of \$980.00. The Department additionally confirmed that the Defendant has no prior IPV offenses.
- 8) The West Virginia Income Maintenance Manual, Chapter 9.1.A.2.h, states:

h. Intentional Program Violation (IPV)

Persons who have been found guilty of an IPV are disqualified as follows:

- 1st offense: 1 year
- 2nd offense: 2 years
- 3rd offense: Permanent

VIII. CONCLUSIONS OF LAW:

- 1) The Department clearly established that the Defendant reported misleading information about her household composition during two SNAP applications and an application for West Virginia Clothing Allowance. The Department showed that this resulted in a SNAP overissuance totaling \$980.00.
- 2) The Department also clearly established the intent of the Defendant to provide misleading information to receive SNAP benefits for which she would not have otherwise been entitled. Although the Department verified the removal of the Defendant's son through internal sources (i.e, the Department's Child Protective Services unit), the Defendant falsely reported on multiple occasions that her son continued to reside with her. The Department was correct in its determination that an IPV was committed by the Defendant.

IX. DECISION:

Intentionally withholding, concealing, or providing misleading facts to secure SNAP benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Agency's proposal to apply a Food Stamp disqualification is **upheld**. The Defendant will be disqualified from participation in the Food Stamp program, or SNAP, for a period of twelve (12) months to begin effective October 1, 2009.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of August, 2009.

Todd Thornton
State Hearing Officer