



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

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

July 9, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification Hearing held June 24, 2010 for the purpose of determining whether or not you 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 SNAP 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 §20.2 and Code of Federal Regulations - 7 CFR §273.16).

The information submitted at the hearing showed that you intentionally withheld information about your household's income in order to receive SNAP for which you were not entitled.

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to apply a one (1) year SNAP disqualification penalty against you based on an Intentional Program Violation. Your penalty begins September 1, 2010.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/Jennifer Butcher, Kanawha DHHR

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

-----,

Defendant

v.

Action Number: 10-BOR-1263

**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 an Administrative Disqualification Hearing 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 June 24, 2010. Additional time was allowed following the hearing for both participants to provide additional evidence. This timeframe expired on July 6, 2010 and the hearing was concluded.

It should be noted that the hearing was originally scheduled to be held on June 9, 2010 but was rescheduled at the defendant's request.

II. PROGRAM PURPOSE:

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 households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

-----, Defendant

Jennifer Butcher, State Repayment Investigator, Department Representative

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the defendant committed an intentional program violation and should be disqualified for one year from participation in 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 Benefit Recovery Referral Screen from RAPIDS dated May 24, 2010
- D-2 Code of Federal Regulations 7 CFR 273.16
- D-3 WV Income Maintenance Manual Section 1.2.E
- D-4 Combined Application Form (CAF) and supporting forms dated July 2, 2008
- D-5 Notification letter dated July 3, 2008
- D-6 Various FACTS computer screens
- D-7 CAF and supporting forms dated December 11, 2008
- D-7a Notification letter dated December 30, 2008
- D-8 FACTS computer screen showing April 2009 child care payments
- D-9 WV Children's Health Insurance Program (CHIP) application dated May 31, 2009
- D-10 CAF and supporting forms dated June 24, 2009
- D-10a Notification letter dated June 5, 2009
- D-11 Notification letter dated July 10, 2009
- D-12 West Virginia School Clothing Allowance application dated August 4, 2009 and Notification letter dated August 5, 2009
- D-13 CAF and supporting forms dated December 3, 2009
- D-13a Notification letter dated December 4, 2009
- D-14 West Virginia Low Income Energy Assistance Program (LIEAP) application and supporting forms dated December 3, 2009
- D-15 West Virginia (WV) Income Maintenance Manual Section 2.2.B
- D-16 WV Income Maintenance Manual Section 2.2
- D-17 WV Income Maintenance Manual Section 2.2.B.3
- D-18 Food Stamp Claim Determination forms and supporting documents
- D19 WV Income Maintenance Manual Section 20.6
- D-20 Notification letter to Defendant dated April 20, 2010 and letter from Defendant Dated April 29, 2010
- D-21 WV Income Maintenance Manual Section 20.2

- D-22 WV Income Maintenance Manual Section 20.2.E and F
- D-23 WV Income Maintenance Manual Section 20.2.F.2 (a)
- D-24 Case Comments from June 2008 through December 2009

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing (ADH) was received by the Board of Review from the Department of Health and Human Resources (Department) on May 7, 2010. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and made a fraudulent statement or misrepresentation regarding his household income in order to receive SNAP (formerly known as the Food Stamp Program), and is recommending that he be disqualified from participation in SNAP for a period of one (1) year.
- 2) On or about April 20, 2010 the Department sent a Waiver of Administrative Disqualification Hearing (D-20) form to the Defendant, indicating that it believed that he received SNAP by means of an intentional violation of a program rule. The letter alleges that the Defendant failed to report when his total household income exceeded one hundred thirty percent (130%) of the Federal Poverty Level for a household of two (2) individuals, which is one thousand four hundred eighty four dollars (\$1484.00), on more than one (1) occasion.
- 3) The Department presented evidence to show that the Defendant completed a SNAP review (D-4) on July 2, 2008 at which time he also signed the Rights and Responsibilities forms indicating he understood his responsibility to report accurate and truthful information and the penalties involved for failure to do so. Additionally, the Department sent the Defendant a notification letter (D-5) dated July 3, 2008 which included the following instructions:

You must contact this office and report if your total household income increases to more than \$1484.00 per month. Gross income is the amount of all unearned income received in a month, plus the amount of earned income before any taxes or other withholdings are taken out. This includes the income of all individuals who live in your home, whether or not they are included in your Food Stamp case.

- 4) The Defendant completed a SNAP review on December 11, 2008 and again signed the Rights and Responsibilities forms. The Department sent him a notification letter (D-7a) at that time explaining the following obligations:

You must contact this office and report if your total household income increases to more than \$1517.00 per month. Gross income is the amount of all unearned income received in a month, plus the amount of all unearned income received in a month, plus the amount of earned income before any taxes or other withholdings are taken out. This includes the income of all individuals who live in your home, whether or not they are included in your SNAP benefit case.

- 5) The evidence shows (D-6) the Defendant's earned income from [REDACTED] totaled one thousand seven hundred fifty eight dollars and fifty cents (\$1758.50) in April 2009. This exceeds the one hundred thirty percent (130%) federal poverty level of one thousand five hundred seventeen dollars (\$1517.00), and was not reported by the Defendant as instructed.
- 6) The Defendant completed a children's Medicaid application (D-9) on May 31, 2009 at which time he reported that his earnings for May 2009 were eleven hundred dollars (\$1100.00). The evidence shows (D-6) he received one thousand seven hundred sixteen dollars and fifty cents (\$1716.50) in May 2009, which again exceeds the one hundred thirty percent (130%) federal poverty level.
- 7) The Defendant completed a SNAP review on June 24, 2009 (D-10), again signing the Rights and Responsibilities forms. He was required by the Department at that time (D-10a) to supply verification of all income received within the past thirty (30) days prior to his interview. This would have included all income received from May 25, 2009 and June 24, 2009. He did not provide verification of pay received on June 11, 2009 (D-6) in the amount of two thousand two hundred dollars and fifty cents (\$2200.50). The June 11, 2009 pay was received within the prior thirty (30) days of the review and was required to be provided as verification of income for consideration.
- 8) The Department sent the Defendant a letter dated July 10, 2009 (D-11) which instructed him to report by the tenth (10th) of the following month if his gross earnings exceeded one thousand five hundred seventeen dollars (\$1517.00).
- 9) The Defendant completed an application for West Virginia School Clothing Allowance (WVSCA) on August 4, 2009. This was a self completed application. He stated his gross earnings were one thousand seven hundred sixteen dollars (\$1716.00) per month. The evidence shows (D-6) he received two thousand six hundred seventy eight dollars and fifty cents (\$2678.50) on or about August 6, 2009.
- 10) The Defendant completed a SNAP application on December 3, 2009 at which time he also signed the Rights and Responsibilities forms. He failed to report that he was still employed and had received earnings in the prior thirty (30) days of the date of application. He received three thousand one hundred thirty one dollars (D-6) on November 10, 2009, and another check dated December 8, 2009 in the amount of two thousand eight hundred seventy six dollars and fifty cents (\$2876.50). These amounts again exceed the one hundred thirty percent (130%) federal poverty level of one thousand five hundred seventeen dollars (\$1517.00).
- 11) The Defendant contends that he did not commit an Intentional Program Violation (IPV). He testified that during months when he received two pay checks he did not think to "turn all that in". He added that he is not smart enough and did not understand the instructions clearly. There was no further evidence provided to support this claim.
- 12) West Virginia Income Maintenance Manual §1.2 (E) states that it is the client's responsibility to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.

- 13) West Virginia Income Maintenance Manual § 20.2 (C) (2) states in pertinent part:

IPV's include making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.

The individual(s) who is found to have committed an IPV is ineligible to participate in the program for a specified time, depending on the number of offenses committed.

Once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV.

- 14) Common Chapters Manual 700, Appendix A, Section B, provides 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 benefits.
- 15) Common Chapters Manual 700, Appendix A, Section G, states that the State Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an Intentional Program Violation as defined in Section B of this Appendix.
- 16) The Defendant signed numerous Rights and Responsibilities forms (D-6) thereby acknowledging the following pertinent responsibilities:

4) 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 SNAP benefits as follows: First Offense – one year; Second Offense – two years; Third Offense – permanently.

48) I also understand that if I give incorrect or false information or if I fail to report changes that I am required to report, I may be required to repay any benefits I receive and I may also be prosecuted for fraud. I also understand that any person who obtains or attempts to obtain benefits from DHHR by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device can be charged with fraud.

49) I certify that all statements on this form have been read by me or read to me and that I understand them. I certify that all the information I have given is true and correct and I accept these responsibilities.

- 17) West Virginia Income Maintenance Manual §9.1.A.2.h states:

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 policy and regulations that govern the SNAP program state that a 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 regulations state there must be clear and convincing evidence that demonstrates the defendant intentionally committed an Intentional Program Violation.
- 3) The Defendant clearly was aware of his responsibility to report accurate and truthful information and the penalties involved for failure to do so. He signed numerous Rights and Responsibilities forms during the period in question which supports that he was knowledgeable of those rights and responsibilities. These forms clearly inform the individual that giving incorrect or false information may be considered fraud, and explains the penalties involved for providing false information.
- 4) Additionally, the Defendant received numerous letters from the department during this same time frame which clearly instructed him to report when his income exceeded a certain amount during any given month. The instructions are found to be simple and uncomplicated, and clearly outline his responsibilities. The evidence is not sufficient to support that the Defendant was incapable of understanding or complying with these instructions.
- 5) Therefore, the evidence clearly shows that the Defendant intentionally reported false information about his household income on four (4) separate occasions in order to receive SNAP. He also at times intentionally withheld information about his household income when it exceeded an amount allowed by the department.
- 6) The Department was correct in its determination that the Defendant has committed an Intentional Program Violation by intentionally reporting false information about his household income.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**. The penalty will begin September 1, 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th Day of July, 2010.

**Cheryl Henson
State Hearing Officer**