



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 21, 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 July 20, 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 failed to show that you intentionally reported false information about your household's composition in order to receive SNAP for which you were not entitled.

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

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/Natasha Jemerison, Kanawha DHHR

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

-----,

Defendant

v.

Action Number 10-BOR-1361

**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 July 20, 2010.

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

-----, Defendant's witness

Natasha Jemerison, State Repayment Investigator
Melissa Barr, State Repayment Investigator, observing
Becky Pancake, State Repayment Investigator, observing

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 computer system dated July 15, 2010
- D-2 WV Income Maintenance Manual §1.2.E
- D-3 Food Stamp Claim Determination and accompanying forms
- D-4 Code of Federal Regulations §7CFR273.16
- D-5 Combined Application Form (CAF) dated October 9, 2008
- D-6 Rights and Responsibilities forms dated October 9, 2008
- D-7 CAF dated April 20, 2009
- D-8 Rights and Responsibilities forms dated April 20, 2009
- D-9 West Virginia School Clothing Allowance application dated September 4, 2009
- D-10 Case Comments from RAPIDS computer system
- D-11 WV Income Maintenance Manual Section 20.6
- D-12 Signed IG-BR-44 form dated May 19, 2010

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 28, 2010. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and made a fraudulent statement or misrepresentation regarding his household composition 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 May 6, 2010 the Department sent the Defendant a Notification of Intent to Disqualify (D-12) form, indicating that the Department had reason to believe he intentionally violated a food stamp rule. The form also included the following:

It has been determined that ----- received food stamps to which he was not entitled for the period of 11/01/08 through 10/31/09. Further, it is believed that you received food stamp coupons by intentional violation of a program rule. Therefore, a request for an Administrative Disqualification Hearing (ADH) for the purpose of proving the following allegation will be made: -----
- added his son to his food stamp case while he was living with his mother.

The Defendant signed the form indicating he wished to have an administrative hearing on the matter.

- 3) The Defendant completed applications for SNAP on October 9, 2008 (D-5) and April 20, 2009 (D-7) at which time he reported that his son lived with him part of the time. On both occasions he also completed Rights and Responsibilities forms (D-6, D-8). He also completed a West Virginia School Clothing Allowance (SCA) application (D-9) on September 4, 2009 listing his son as a household member.
- 4) The Department presented as evidence copies of case comments (D-3) showing that the child's mother reported during October 2009 that the child does not live with the Defendant and that the Defendant had not seen the child in three (3) years. Throughout his testimony during the hearing as well as during a subsequent pre-hearing conference with the Department, the Defendant acknowledged that the child had not lived with him in three (3) years, and made no attempt to discredit this claim.
- 5) The Defendant testified that he reported to the Department during the application process that his son lived with him part of the time and that he shared joint custody with the child's mother. The case worker's recording in her case comments (D-3) on October 9, 2008 corroborates his testimony. There is no indication in those comments to show, however, that this arrangement was explored by the case worker to determine the specific living arrangement of the child and no indication the Department asked the Defendant to provide a copy of the court order involved. He testified that he does not believe he committed an intentional program violation, as he did not intend to mislead the Department. He stated he did not understand the SNAP policy and his intentions were simply to provide for himself and his son. He added that he believed the child would come to stay with him at some point because he had a 2008 court order providing him with shared custody.
- 6) The Defendant's grandmother, -----, corroborated his testimony. She stated that the child lived with the Defendant during the first few years of life, but that he had not been allowed to see the child since that time. She stated although a 2008 court order granted him shared joint custody, the child's mother had not abided by it and continually refused to let the child visit. She stated that time and again they would prepare for the child to stay with them, only to be let down when he did not arrive. She added that each time the Defendant would purchase food in preparation for the child staying with him. She agreed that the Defendant had not seen the child in three (3) years. Additionally, [REDACTED] provided that the Defendant has mental and physical disabilities, however, she did not elaborate and no additional information was provided in that regard.

7) 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.

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

IPV's include making false or misleading statement, 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.

9) 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.

10) 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.

11) The West Virginia Income Maintenance Manual §9.1 A provides the following pertinent information regarding SNAP assistance group determinations:

A. THE ASSISTANCE GROUP (AG)

1. Who Must Be Included

The SNAP AG must include all eligible individuals who both live together and purchase and prepare their meals together.

An individual cannot be a member of more than one SNAP AG in any month.

When an individual, who is included in an AG, is absent or is expected to be absent from the home for a full calendar month, he is no longer eligible to be included in the AG, and must be removed after proper notice.

- **Children Under Age 22, Living With a Parent**
Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent.

In the instance of shared custody, when the child is legally considered to reside with each parent equal amounts of time (50/50), the parents must decide where the child “lives”. If no one is receiving any benefits from the Department for the child, it is assumed that the living arrangements are not questionable and the child is added to the AG that wishes to add him. If the child is already listed in another AG or the other parent wishes to add the child to his AG, the parents must agree as to where the child “lives” and, ultimately, to which AG he is added. Where the child receives the majority of his meals is not relevant.

12) 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 Food Stamp program provide that a child must be living with a parent in order to be included in their AG. Policy also states 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 evidence clearly shows that the Defendant’s child did not live with him during the period in question. The Defendant does not dispute this and made no attempt to convince this Hearing Officer otherwise.
- 4) The Defendant’s statement to the Department that the child lived with him part of the time was not accurate. The Defendant was granted a court order awarding him shared custody in 2008 and his testimony supports that he believed the child would be residing with him fifty percent (50%) of the time. The Defendant’s testimony in regard to his lack of understanding of the policy in regard to AG composition is found to be credible. It is clear that he did not understand that his child must be living in his home in order to be included in his SNAP AG.

- 5) The witness testimony provides that the Defendant has some degree of mental disability as well, which supports that his ability to understand and comprehend his responsibilities may be diminished.
- 6) The totality of the evidence does not support that the Defendant intentionally reported false or inaccurate information in order to receive SNAP.
- 7) The Department was not correct in its determination that the Defendant has committed an Intentional Program Violation by intentionally reporting false information about his household composition in order to receive SNAP.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **reversed**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of July, 2010.

**Cheryl Henson
State Hearing Officer**