



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 E. Third Avenue
Williamson, WV 25661**

**Earl Ray Tomblin
Governor**

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

November 24, 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 September 8, 2010 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 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.

An Intentional Program Violation consists of having intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts; or committed any act that constitutes a violation of the Food Stamp Act, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. [WV Income Maintenance Manual Section 20.2,C,2 and 7 CFR Section 273.16 (c)]

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. You used an Electronic Benefits Transfer (EBT) card which did not belong to you to purchase food.

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 January 1, 2011.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

-----,

Defendant,

v.

Action Number: 10-BOR-1557

**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 concluded on November 24, 2010 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. The hearing was convened on September 8, 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:

Brian Shreve, Repayment Investigator

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

The Hearing Examiner placed participant under oath at the beginning of the hearing.

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 1.2, Chapter 20.2; Chapter 20.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of the Code of Federal Regulations (CFR) §273.16 showing disqualifications for Intentional Program Violations..
- D-2 BVRF Screen print from RAPIDS System showing referral for recoupment.
- D-3 ES-FS-5, SNAP Claim Determination sheet.
- D-4 Second ES-FS-5, SNAP Claim Determination sheet, showing overpayment from the trafficking allegation.
- D-5 CMCC Screen Print from RAPIDS System showing case comments made from April 7 through April 13, 2010.
- D-6 Screen Prints from WV Department of Motor Vehicles (DMV) computer system showing driver's license and vehicle title information.
- D-7 Copy of vehicle sale and auto loan agreement between [REDACTED] and Defendant and spouse, dated March 12, 2010.
- D-8 Copy of employment verification form dated May 13, 2010, sent from Repayment Investigator to [REDACTED] and returned to Investigator on May 21, 2010.
- D-9 Common Application Form (CAF) from RAPIDS System dated November 2, 2009 and Rights and Responsibilities Form (DFA-RR-1), both signed and dated by Defendant.
- D-10 CMCC Screen Print from RAPIDS System showing case comments made from November 2 through November 18, 2010.
- D-11 DFA-LIEAP-1, Emergency LIEAP application form dated January 21, 2010.
- D-12 CMCC Screen Print from RAPIDS System showing case comments made from December 28, 2009 through March 8, 2010.
- D-13 CSWD screen print from RAPIDS showing waiting list at WV DHHR, [REDACTED] County Office, on June 2, 2010 (redacted.)
- D-14 CMCC Screen Print from RAPIDS System showing case comments made in SNAP case of Defendant's brother-in-law on June 2, 2010.
- D-15 Print-out from EBT account of Defendant's brother-in-law.
- D-16 Written statement from Defendant's brother-in-law, dated June 2, 2010.
- D-17 Written statement from friend of Defendant's brother-in-law, dated June 2, 2010.
- D-18 Print-out from MapQuest, internet mapping service, indicating distance from [REDACTED] WV, to [REDACTED] WV.
- D-19 Copy of Income Maintenance Manual Chapter 1.2.E showing customer responsibility for providing accurate information.
- D-20 Copy of Income Maintenance Manual Chapter 20.1 and 20.2 showing SNAP benefit claims and repayment procedures.
- D-21 Copy of Income Maintenance Manual Chapter 20.6.A showing definitions of Welfare Fraud.
- D-22 Copy of letters from Repayment Investigator to Defendant, including appointment letters for pre-hearing conferences scheduled for June 9, 2010 and June 29, 2010 at the [REDACTED] County office of the WV DHHR, dated June 2, 2010 and June 15, 2010.

VII. FINDINGS OF FACT:

- 1) The Department is alleging an act of Intentional Program Violation, or IPV, in the Defendant's SNAP (formerly Food Stamp) case because she allegedly failed to report that her husband was living in her home and that he had earned income, during a benefits review interview on September 1, 2009. Also, the Department is alleging that Defendant fraudulently obtained and used the Electronic Benefits Transfer (EBT) card belonging to another individual, in order to access that individual's SNAP benefits without his permission.
- 2) Defendant was mailed notice of the Administrative Disqualification Hearing on August 2, 2010, by first class mail. The notice was sent to -----, -----. This is the address at which Defendant receives her public assistance benefits.
- 3) The hearing was scheduled for 10:30 a.m. on September 8, 2010, 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, 740.20), the hearing convened at 10:45 a.m., and was conducted without the Defendant in attendance.
- 4) On November 2, 2009, Defendant came into the WV Department of Health and Human Resources, [REDACTED] County office in [REDACTED] WV, and completed a review for SNAP benefits. An Economic Service Worker (ESW) recorded that Defendant made the application and reported that her household consisted of herself and her four children. The worker recorded that the only income in Defendant's household at that time was her Supplemental Security Income (SSI) and child support. (Exhibit D-10.) At the conclusion of the application interview, Defendant signed and dated a DFA-RFA-1, a Common Application Form (CAF) which contained information she had given the worker during the interview, and she signed and dated a DFA-RR-1, a Rights and Responsibilities form. (Exhibit D-9.) The CAF signature page states,

I understand my responsibility to provide complete and truthful information. I have reviewed or had read to me the information contained in this automated portion of the application form and I understand the information. I understand that it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits to which I am not by law entitled. Under penalty of perjury, I certify that the statements are true and correct.

The DFA-RR-1, Rights and Responsibilities form is a list of applicants' rights and responsibilities for each program for which an applicant applies. The applicant signifies that he or she is aware of each right or responsibility by checking "Yes" or "No" at each item. Under the SNAP Program section of the form, item #4 states,

I understand if I am found (by court action or 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. In addition, I will have to repay any benefits received for which I was not eligible.

Defendant has marked "Yes" at this item.

- 5) On April 7, 2010, an Economic Services Supervisor submitted to the Investigations and Fraud Management (IFM) unit a referral regarding Defendant's SNAP benefits, indicating that Defendant's husband lived in her home and was working. (Exhibit D-2.)
- 6) Department's representative, the Repayment Investigator who investigated the allegations, submitted into evidence print-outs from the WV Department of Motor Vehicles (DMV) indicating that both Defendant and her spouse had renewed their driver's licenses, and their updated mailing addresses on their licenses were listed identically as the same address at which Defendant receives her public assistance benefits. He also submitted print-outs from the WV DMV indicating that Defendant and spouse jointly owned two vehicles, with the owners' addresses listed as identical to the ones on their licenses. (Exhibit D-6.) Department's representative submitted into evidence copies of a sales agreement from a used-car lot indicating Defendant and spouse purchased a vehicle together on March 12, 2010. They signed the sales agreement and financing documentation on that date. (Exhibit D-7.)
- 7) Department's representative testified that he obtained the name of Defendant's spouse's employer and sent the employer a form asking for employment data such as hire date and rate of pay. He testified that the employer returned this form on May 21, 2010. (Exhibit D-8.) According to this document, Defendant's spouse was hired on June 2, 2009, he listed Defendant's mailing address as his mailing address, and he entered tax data indicating he claimed his tax status as married with five dependents for Federal taxes, and married with four dependents for state taxes. The document indicates that from spouse's hire date to May 21, 2010, he received \$58,772.15 in gross pay.
- 8) Department's representative testified that on the morning of June 2, 2010, an individual identified as Defendant's brother-in-law appeared at the WV DHHR, [REDACTED] County office, to report that Defendant had used his EBT card without his permission. Department's representative interviewed this person, and obtained a written statement which outlined the events that lead to this incident. (Exhibit D-16.) According to this statement, the brother-in-law reported that he was spending some time in Defendant's home with his brother and Defendant. On June 1, 2010, Defendant ordered him to leave the home and requested that the WV State Police assist her in evicting him. As a State Police trooper was escorting him to a friend's home to spend the night, the brother-in-law realized he had left his wallet with the EBT card inside Defendant's home. The State Trooper refused to take the brother-in-law back to Defendant's home to let him get the wallet or to go into the home to get the wallet on brother-in-law's behalf. The brother-in-law came to the [REDACTED] DHHR office as soon as possible the next morning, in order to have a worker cancel his EBT card. The worker checked the EBT computer system and determined that at 7:48 that morning, all of the brother-in-law's SNAP benefits were spent at a supermarket in [REDACTED] WV.
- 9) Department's representative submitted into evidence the [REDACTED] DHHR's reception desk sign-in sheet for June 1, 2010. (Exhibit D-13.) This document indicates the brother-in-law

signed in to see a DHHR worker at 8:36 AM. Department's representative submitted a print-out from the MapQuest internet site which estimates that it is a 38-minute drive from the supermarket at which the brother-in-law's SNAP benefits were spent to the [REDACTED] County DHHR office, at optimal driving and traffic conditions. (Exhibit D-18.) If the EBT card was used at 7:48 AM and the brother-in-law signed into the DHHR reception desk at 8:36, he would have had to complete the sale, taken his purchases to the parking lot and put them into the vehicle, then drive to the DHHR office in 48 minutes. He testified that it would be nearly impossible to do this. He further submitted a statement from the friend with whom the brother-in-law spent the night indicating that they did not leave the friend's home until 7:00 AM. (Exhibit D-17.) Department's representative testified that it would not be possible to drive from the friend's home at 7:00 AM to [REDACTED] WV, purchase \$200 worth of groceries, and be at the [REDACTED] DHHR by 8:36 AM.

- 10) Department's representative testified that he calculated the amount of SNAP benefits that Defendant received as a result of her not reporting her spouse was living with her and working, and as a result of improperly using her brother-in-law's EBT card. (Exhibit D-3 and Exhibit D-4.) He determined that Defendant was overpaid SNAP benefits in the amount of \$2031 and improperly used \$200 from her brother-in-law's EBT account; therefore, she obtained \$2231 in SNAP benefits for which she was not entitled.

- 11) The Code of Federal Regulations, 7 CFR §273.16(c) (Exhibit D-1), defines an Intentional Program Violation (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).

- 12) The West Virginia Income Maintenance Manual, Chapter 1.2.E (Exhibit D-19), states:

The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility . . . The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions: denial of the application; closure of the active AG [assistance group]; removal of the individual from the AG; repayment of benefits; reduction in benefits.

- 13) 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

14) The West Virginia Income Maintenance Manual, Chapter 20.2 (Exhibit D-20), states:

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.

15) The West Virginia Income Maintenance Manual, Chapter 20.6.A (Exhibit D-21), states:

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false . . . [I]t is not essential that an affirmative representation be made. Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false.

VIII. CONCLUSIONS OF LAW:

The Department has established that the Defendant intentionally failed to report that her husband was living in her home, and that he received earned income, during a SNAP benefits review on November 2, 2009. She signed a Computer Application Form to the effect that the only individuals in her household were herself and her four children, and she signed a Rights and Responsibilities document indicating that she was aware of her responsibility to provide complete and accurate information and of the penalties for not doing so.

The Department has established that the Defendant fraudulently obtained the EBT card of another SNAP recipient and used it without his permission to access SNAP benefits to which she was not entitled.

IX. DECISION:

Withholding information concerning household composition and earned income during a SNAP application is a clear violation of the regulations. Fraudulently obtaining and using an EBT card without the permission of the card owner is a clear violation of the regulations. Based on the evidence presented, I find the violations intentional.

The Agency's proposal to apply a SNAP disqualification is **upheld**. The Defendant will be disqualified from participation in SNAP, or the Food Stamp program, for a period of twelve (12) months to begin effective January 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of November, 2010.

**Stephen M. Baisden
State Hearing Officer**