



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General**

**Joe Manchin III
Governor**

**Board of Review
P.O. Box 1736
Romney, WV 26757**

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

September 16, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification hearing held September 9, 2010. The purpose of this hearing was to determine whether or not you intentionally committed an Intentional Program Violation.

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 the Supplemental Nutrition Assistance Program is based on current policy and regulations. These regulations provide 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 which was submitted at your hearing revealed that you did intentionally mislead the Department by reporting an incorrect household composition.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to implement a 12-month Intentional Program violation against you.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Lori Woodward, RI

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

-----,

Defendant,

v.

Action Number: 10-BOR-1720

**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 a fair 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 fair hearing was convened on September 9, 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
Lori Woodward, Repayment Investigator (RI)

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation and should be disqualified for one year from participation in the Supplemental Nutrition Assistance Program or SNAP.

V. APPLICABLE POLICY:

Code of Federal Regulations, 7 CFR § 273.16
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-1a Computer printout of case comments from April 11, 2008
- D-1b Combined Application and Review form dated April 11, 2008
- D-1c Identity Declaration dated April 11, 2008
- D-2 Request for EBT Account Deduction, Cash Assistance Claim Determination Worksheet
- D-3 Information from Spotsylvania Department of Social Services
- D-4 Food Stamp Claim Determination Worksheet
- D-5 Notification of Intent to Disqualify dated July 29, 2010
- D-6 Waiver of Administrative Disqualification Hearing
- D-7 West Virginia Income Maintenance Manual Chapter 1.2, 1.4, 2.2, 9.1
- D-8 West Virginia Income Maintenance Manual Chapter 20.2 and Common Chapters 740-740.11

Defendant's Exhibits

Defendant-1 Attendance Record for -----September 2009 through August 2010

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on August 9, 2010. The Department contends that the Defendant committed an Intentional Program Violation (IPV) and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a twelve (12) month period.
- 2) On August 21, 2010, the Defendant completed Exhibit D-6, Waiver of Administrative Disqualification Hearing affirming that he read such notice and chose his right to have an administrative hearing. The hearing convened as scheduled on September 9, 2010.
- 3) On April 11, 2008, the Defendant completed an application for Medicaid, SNAP, and WV WORKS assistance. The Defendant completed Exhibit D-1b, Combined Application and Review form reporting a household composition of himself and his granddaughter. Based on the reported information, the Defendants application was approved on the same date.

On April 17, 2008, the Defendant requested that the WV WORKS assistance be terminated as he did not wish to pursue child support for his granddaughter. Additionally, the Defendant completed Exhibit D-2, requesting that the WV WORKS assistance be removed from his Electronic Benefits Transfer card. While completing such request, the Department discovered that the Defendant had utilized \$121.00 of the WV WORKS assistance and completed a WV WORKS Claim Determination initializing a claim to seek repayment for the expended amount.

- 4) Lori Woodward, Repayment Investigator testified that the Department received information documenting that the Defendant's granddaughter was included in an assistance case in [REDACTED] with her mother -----, during the same timeframe in which the Defendant reported that the child was residing with him in West Virginia. Ms. Woodward presented Exhibit D-3; Information from the [REDACTED] Department of Social Services, this documentation is provided by Teresa McRae, Investigator and is based on her investigation of the circumstances. This exhibit documents in pertinent part:

-----is and has been enrolled in school. [REDACTED] County School System verified the Child's movement from middle to high school. Please note that page 4 of this print out indicates that, ----- has been included in her mother's AG since 2005.

Additionally, this document lists -----' Food Stamp Issuance History in the state of [REDACTED] from October 2005 through November 2008 demonstrating that the child in question was included in the assistance with her mother for the specific timeframe.

- 5) Ms. Woodward testified that the Defendant made a false statement concerning his granddaughter's custody and residency at his application on April 11, 2008. Ms. Woodward indicated that it is the responsibility of the applicant to provide true and accurate information regarding their circumstances. Ms. Woodward presented Exhibit D-4, Food Stamp Claim Determination worksheet to establish that the false information provided by the Defendant concerning his household composition, resulted in an overpayment of SNAP benefits in the amount of \$892.00 for the period of April 11, 2008 through November 2008.
- 6) The Defendant contends that there was no intention on his part to mislead or fraud the Department. The Defendant testified that his granddaughter, -----, began residing with him in April 2008. The Defendant stated that he consulted with the Department prior to his application for benefits to obtain specific information concerning documentation that the Department requires to process assistance applications. The Defendant testified that he communicated with his daughter -----, and informed her that she would need to relinquish her benefits in [REDACTED] for ----- in order for him to apply in West Virginia. The Defendant stated that his daughter assured him that she would remove ----- from her assistance in [REDACTED] The Defendant stated that he assumed that his granddaughter was removed from his daughter's assistance when he received approval of his West Virginia benefits. The Defendant stated that he relied on his daughter's word that she had informed her case worker in [REDACTED] of -----'s residency in West Virginia. The Defendant acknowledged that he did not verify that his granddaughter was no longer receiving assistance in [REDACTED]

The Defendant stated that he enrolled his granddaughter in [REDACTED] County Schools [REDACTED] at the time of her relocation to West Virginia in April 2008. Ms. Woodward questioned the

Defendant as to the reasons why the [REDACTED] school system verified his granddaughter's enrollment in their school system and her promotion from middle to high school if she was residing in West Virginia. The Defendant rebutted stating that his daughter did not follow the proper procedure to withdraw his granddaughter from the [REDACTED] school system. The Defendant acknowledged that it took him a two week period to enroll his granddaughter in [REDACTED] as he was required to have immunization records transferred from her previous school to [REDACTED]. The Defendant testified that he was required to provide a notarized written statement from his daughter that granted him legal custody of his granddaughter before he could secure her enrollment with [REDACTED]. Upon receipt of such documentation from his daughter, the Defendant stated that he produced the document to [REDACTED] as well as the Department; however this documentation was not made available during the hearing process.

The Defendant stated that his granddaughter visited her mother for Thanksgiving in November 2008 for Thanksgiving and did not return to West Virginia. The Defendant purported that his granddaughter was enrolled with [REDACTED] from April 2008 to November 2008 upon her relocation back to [REDACTED].

The Defendant stated that his granddaughter is currently residing at his residence. The Defendant presented Exhibit Defendant-1, Attendance record for -----for September 2009 through August 2010. This exhibit demonstrates the Defendant's granddaughter's current enrollment with [REDACTED] and has no bearing to the timeframe in question of April 2008 through November 2008. The Defendant failed to present evidence to demonstrate the child's enrollment during such timeframe and the evidence concerning the current circumstances cannot be considered as part of the State Hearing Officer's decision.

- 7) West Virginia Income Maintenance Manual Chapter 1.2 indicates:

The client's responsibility is 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, Chapter 9.1 indicates:

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

- 1st Offense: 1 Year
- 2nd Offense: 2 Years
- 3rd Offense: Permanent

- 9) Common Chapters Manual 740.11.D states as follows:

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.

10) Common Chapters Manual 740.22.M states as follows:

Decision – 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 policy and regulations that govern SNAP benefits dictate that a 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 presented during the Administrative Disqualification Hearing revealed that the Defendant's granddaughter "is and has been" enrolled in school with the [REDACTED] educational system during and prior to November 2008. Additionally, the evidence from the State of [REDACTED] Repayment Investigator verifies the child's promotion from middle school to high school for the 2008 school year in the state of [REDACTED] and such evidence verifies the child's school attendance in the state of [REDACTED]. This evidence coupled with supporting evidence from the [REDACTED] Department of Social Services that the child has been included in ----- assistance benefits since 2005, indicates that the child has been residing with her mother during the established timeframe of April 2008 through November 2008. This evidence reveals that the Defendant provided false information concerning his household composition and in absence of evidence to the contrary, intent is clearly established.
- 4) In accordance with SNAP policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first (1st) offense is one (1) year.

- 5) The Defendant is the only assistance group member subject to said disqualification penalty. The one year disqualification penalty will begin November 1, 2010 and will run concurrently for the next 12 months.

IX. DECISION:

Intentionally making a false or misleading statement or misrepresenting facts to secure SNAP benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Department's proposal to apply a twelve (12) month disqualification is upheld.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ day of September 2010.

Eric L. Phillips
State Hearing Officer