



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

October 13, 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 October 7, 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 composition 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 December 1, 2010.

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-1812

**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 October 7, 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

Natasha Jemerison, State Repayment Investigator, Department Representative
Tammy Drumheller, Department's witness

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 October 7, 2010
- D-2 WV Income Maintenance Manual §1.2.E
- D-3 Food Stamp Claim Determination forms and supporting documents
- D-4 Code of Federal Regulations 7 CFR 273.16
- D-5 Application for Low Income Energy Assistance Program (LIEAP) dated November 11, 2008
- D-6 Combined Application Form (CAF) dated December 2, 2008 and supporting forms
- D-7 Rights and Responsibilities form dated December 2, 2008
- D-8 CAF dated June 12, 2009 and supporting forms
- D-9 Rights and Responsibilities form dated June 12, 2009
- D-10 Application for West Virginia School Clothing Allowance (SCA) dated July 31, 2009
- D-11 Verification of marriage and two witness statements
- D-12 WV Income Maintenance Manual Section 20.6
- D-13 Notification letters dated August 11, 2009
- D-14 Family Court of [REDACTED] County, West Virginia court documents dated November 1, 2007

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 August 26, 2010. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and made a fraudulent statement or misrepresentation regarding her household composition in order to receive SNAP (formerly known as the Food Stamp Program), and is recommending that the Defendant be disqualified from participation in SNAP for a period of one (1) year.

- 2) On or about August 11, 2010 the Department sent a Waiver of Administrative Disqualification Hearing (D-13) form to the Defendant, indicating that it believed that she received SNAP by means of an intentional violation of a program rule. The letter alleges that she did not report she was married and living with -----.
- 3) The Department presented evidence to show that the Defendant completed an application (D-5) for Low Income Energy Assistance Program (LIEAP) on October 30, 2008 at which time she reported that she lived alone with her two children. She did not report that -----was living in her household. She signed the application certifying that she read or had read to her all statements on the form and that she understood all the questions. She further certified that all information given was true and correct to the best of her knowledge.
- 4) The Defendant completed another application (D-6) on December 2, 2008 at which time she again reported only herself and two children lived in her household. She signed the application indicating she understood her responsibility to report accurate and truthful information. She signed the rights and responsibilities form (D-7) on the same date indicating she again understood her responsibilities and the penalties for failure to provide accurate and truthful information.
- 5) The Defendant completed another application (D-8) on June 12, 2009 at which time she again reported only herself and her two children lived in her household. Again, she signed the application and rights and responsibilities form (D-9) that date indicating she understood her responsibility to report accurately and truthfully and the penalties involved.
- 6) The Defendant completed an application (D-10) for West Virginia School Clothing Allowance (SCA) on July 31, 2009 at which time she reported only herself and her two children in the home. She signed the application certifying the information she provided was true and correct to the best of her knowledge.
- 7) The Department verified the Defendant married ----- (D-11) on October 4, 2008, and provided two witness statements (D-11) to support that the Defendant married -----on October 4, 2008 and also lived with him after that time.
- 8) One of the witness statements (D-11) was provided by -----, who identified herself as the Defendant's cousin. She provided in the statement that she lived near the Defendant when she lived in the trailer park at [REDACTED] West Virginia, and she knows that the Defendant married -----during the month of October 2008 and that she lived with him at the [REDACTED] address from October 2008 until October 1, 2009, when they moved to [REDACTED] West Virginia.
- 9) The other witness statement was provided by the Defendant on February 24, 2010. In her statement, the Defendant admitted that she married -----during the month of October 2008. She provided that -----was at her residence on the date this statement was provided. She added that -----is at her home every day and that he stays the night twice a week. She added that they were in the process of a divorce.
- 10) The Department's witness, Tammy Drumheller, is an Investigator for the Department. She testified that she completed the investigation into the circumstances of the Defendant's case.

She stated that she received a referral during the month of January 2010 in which the referent indicated it was suspected that the Defendant was married to and living with her husband, ----. She stated that she telephoned a number that was previously provided to the Department as a contact number for both the Defendant and ----, and that ----answered the telephone. She stated that she told him she needed to verify his physical address, and she could hear him call out to the Defendant by name and ask her "what is the address here, this is Welfare." He subsequently provided her with the Defendant's [REDACTED] address. She testified that she went to the neighborhood of [REDACTED] on February 24, 2010, and asked a gentleman in the community where the Defendant and ----lived. She added that he pointed at the Defendant's home, and she then visited the home and obtained a written statement from the Defendant (D-11) on that date.

- 11) Ms. Drumheller testified that the Defendant's February 24, 2010 statement (D-11) contained her admission that she married ----during the month of October 2008, and that he was there at her home on the date said statement was given. Ms. Drumheller also provided that the Defendant told her that ----was at her home every day and stayed during the night twice a week. She also provided that she and ----were in the process of a divorce.
- 12) Ms. Drumheller's supervisor, Brian Ballengee, testified that he was present on February 24, 2010 when the Defendant provided her written statement, and he corroborates Ms. Drumheller's testimony in this regard. Mr. Ballengee provided that he recalled that ----was asleep in the next room while they interviewed the Defendant on the date in question. He added that ----was awake enough to ask what was occurring, but chose not to come out of the other room and participate in the interview. Mr. Ballengee added that he observed the Defendant to be very nervous during the interview, and that he perceived her answers to be evasive in nature.
- 13) The Defendant testified that she reported to a woman at the Department's [REDACTED] County office during the month of December 2008 that she was married. She did not remember the name of the person she spoke with or the specific day, but said that she reported that she was married to ----but did not live with him in the same home. She stated she explained to the worker that they did not get along and "fought" a lot so they chose not to live together. She explained that the reason ----was at her home on the date of the Department's interview was because he had taken her to the emergency room the night before and was tired. He asked could he stay the night at her home rather than return to his own, and she agreed. She also provided that ----supplied the only transportation available to her and that they remained friends. She testified that ----moved some of his possessions into her home at the [REDACTED] [REDACTED] after the October 2008 marriage, and they lived there together 'on and off for a couple of months.'
- 14) The Department's representative, Natasha Jemerison, testified that she reviewed case comments (D-3) from the Department's computer system for the month of December 2008 and found no documentation by the worker to indicate the Defendant reported that she was married to ----or any other information related to him. The case comments document that the household includes one (1) adult and two (2) children. There is no mention of ----.
- 15) 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.

- 16) 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.

- 17) 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.
- 18) 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.
- 19) 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.

- 20) 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 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 her responsibility to report accurate information and the penalties involved. She signed numerous Rights and Responsibilities forms during the period in question which supports that she was knowledgeable of those rights and responsibilities. These forms clearly inform the individual that giving incorrect or false information may be considered fraud, and the penalties involved for providing false information.
- 4) The totality of the evidence clearly shows that the Defendant intentionally reported false information about her household composition on numerous occasions in order to receive SNAP. She repeatedly reported that her household consisted on herself and her two (2) children, when the evidence shows that -----also lived in her household.
- 5) The Department was correct in its determination that the Defendant has committed an Intentional Program Violation by intentionally reporting false information about her household composition.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th Day of October, 2010.

**Cheryl Henson
State Hearing Officer**