



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

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

January 27, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held December 7, 2009 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 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, hereinafter, SNAP (formerly Food Stamp Program) 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).

Information submitted at the hearing reveals that you intentionally provided false and misleading information about your household income in order to receive Food Stamp benefits to which you were not entitled.

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. This disqualification will begin effective March 2010.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Marshall Daniels, SRI, DHHR

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

-----,

Defendant,

v.

Action Number: 09-BOR-1891

**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 January 27, 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. This hearing was convened on December 7, 2009.

II. PROGRAM PURPOSE:

The purpose of the **Supplemental Nutrition Assistance Program** (SNAP), formerly Food Stamp Program 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 EBT 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

Marshall Daniels, State Repayment Investigator, DHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

This hearing was conducted via videoconference technology.

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 the SNAP.

V. APPLICABLE POLICY:

7 CFR § 273.16 USDA Code of Federal Regulations

Common Chapters Manual, Chapter 700

West Virginia Income Maintenance Manual, Chapters 1.2, 1.4, 9.1, 10.3, 10.4 & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 WVDHHR Fraud Referral Form (IFM-1)
- DHS-2 Benefit Recovery Referral - Referral # 9000179859 (5/20/09)
- DHS-3 Defendant's wage information for January 2008 through March 31, 2008 (5 pages)
- DHS-4 Case Comments (1/21/09)
- DHS-5 Benefit Payment History for ----- [REDACTED]
- DHS-6 WVDHHR Application for LIEAP (2 pages) – (1st page 12/12/06), (2nd page 1/9/07)
- DHS-7 Combined Application and Review Form dated 7/6/07 (16 pages)
- DHS-8 Combined Application and Review Form dated 1/3/08 (15 pages)
- DHS-9 Food Stamp Claim Calculation Sheet – January 2007 through December 2007
- DHS-10 Food Stamp Claim Determination
- DHS-11 West Virginia Income Maintenance Manual Chapter 20.2
- DHS-12 West Virginia Income Maintenance Manual Chapter 20.2.C.2 (2 pages)

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from State Repayment Investigator Marshall Daniels on September 17, 2009. Mr. Daniels contends that the Defendant has committed an Intentional Program Violation and is recommending that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program, hereinafter SNAP (formerly Food Stamp Program), for a period of one (1) year.
- 2) The Department contends that the Defendant intentionally violated SNAP regulations by failing to report employment income received by her and her husband, -----, when she completed an application for LIEAP in December 2006 (DHS-6), a review of her SNAP benefits on 7/6/07 (DHS-7) and a SNAP review completed on 1/3/08 (DHS-9).

- 3) The Department submitted verification of employment income for the Defendant from [REDACTED] LLC for the period November 30, 2006 through April 10, 2007 and verified that [REDACTED] had \$11,683 in self-employment income for the year 2007 (DHS-4) in addition to his reported unemployment income (DHS-5).
- 4) The Department submitted DHS-9 (Food Stamp Claim Calculation Sheet) which shows the monthly calculations for corrected SNAP benefit amounts with the unreported employment income. The information found in DHS-9 supports the findings in the Food Stamp Claim Determination (DHS-10) that during the period January 2007 through December 2007, the Defendant's household received \$3,055 in SNAP benefits to which it was not legally entitled.
- 5) The Department referred to the Rights and Responsibilities form (included in DHS-7 and DHS-8) that was completed and signed by the Defendant on the day of SNAP application/Review (7/6/07 and 1/3/08). The Defendant marked "yes" to item #4 on both forms which state:

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 Food Stamp 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.

By signing the DFA-RR-1, the Defendant certified that she read, understood, and accepted the rights and responsibilities and that all of the information he provided was true and correct.

- 6) The Defendant reported that her employment income with [REDACTED] was inconsistent although her employer tried to make sure she worked a minimum of 19 hours per week. She further testified that her husband's self-employment earnings were often irregular. The Defendant purported that she did not report the employment income because it was not very much / not over a certain amount (the certain amount was not clarified) and the income was received inconsistently. In addition, the Defendant testified that her husband's self-employment income was inflated as his cousin included reimbursement for travel/living expenses in his paycheck so his unemployment benefits would be larger.
- 7) West Virginia Income Maintenance Manual, Chapter 10.4:
This section contains policy relating income disregards and deductions and to computation of and eligibility for SNAP benefits. It also states: To determine the coupon allotment, find the countable income {emphasis added} and the number in the benefit group.
- 8) West Virginia Income Maintenance Manual, Chapter 10.3 confirms that earned income must be considered when determining SNAP eligibility and benefit amount.
- 9) West Virginia Income Maintenance Manual, Chapter 1.2 (E):
The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.

- 10) West Virginia Income Maintenance Manual, Chapter 20.2:
When a AG (assistance group) has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.
- 11) West Virginia Income Maintenance Manual, Chapter 20.2 (C) (2):
Once an IPV (Intentional Program Violation) is established a disqualification penalty is imposed on the AG (assistance group) members who committed the IPV. The penalties are as follows: (Chapter 9.1, A, 2, h) 1st Offense: 1 year (Disqualification)
- 12) Common Chapters Manual §740.11.D. 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.

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern SNAP benefits 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) While it is clear the Claimant should have disclosed earned income when she completed the LIEAP application in January 2007, an IPV cannot be established based on this application as SNAP income reporting requirements for an active case are different than at the time of application/review and the Defendant was not applying for SNAP benefits in January 2007. Furthermore, it is not possible to establish an IPV based on the January 2008 SNAP application as neither benefit receipt nor income has been verified from that application. However, the evidence reveals that in July 2007, the Defendant provided false and misleading information about her household income in order to receive SNAP benefits for which she was not legally entitled. This clearly establishes intent.
- 3) The evidence is clear and convincing that the Defendant intentionally committed a SNAP/Food Stamp Program violation as defined in the Food Stamp policy and regulations.

- 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 time offense is twelve months (one year).
- 5) Only the Defendant is subject to this disqualification. The 1-year disqualification will begin effective March 1, 2010.

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 Agency's proposal to apply a Food Stamp disqualification is **upheld**. The Disqualification period will begin effective March 1, 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of January, 2010.

**Thomas E. Arnett
State Hearing Officer**