



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

March 19, 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 March 18, 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 did not commit an Intentional Program Violation.

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: 09-BOR-2425

**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 March 18, 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

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 (IPV) 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 December 14, 2009
- D-2 WV Income Maintenance Manual §1.2.E
- D-3 Code of Federal Regulations §7CFR273.16
- D-4 Combined Application Form dated November 14, 2008 and accompanying forms
- D-5 Rights and Responsibilities forms dated November 14, 2008
- D-6 WVCHIP Medicaid application dated April 16, 2009
- D-7 Combined Application Form dated May 11, 2009 and accompanying forms
- D-8 Rights and Responsibilities forms dated May 11, 2009
- D-9 Various verifications including [REDACTED] Housing Authority
- D-10 WV Income Maintenance Manual Section 23.10
- D-11 Food Stamp Claim Determination forms including case comments and RAPIDS screens
- D-12 WV Income Maintenance Manual Section 2.2
- D-13 WV Income Maintenance Manual Section 20.6
- D-14 Notification letters dated December 14, 2009
- D-15 WV Income Maintenance Manual Section 20.2
- D-16 Sworn written statement dated July 9, 2009
- D-17 Information from [REDACTED] Housing Authority

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 December 28, 2009. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and withheld information regarding her household composition and assets 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 December 14, 2009 the Department sent the Defendant a Notification of Intent to Disqualify (D-14) form, indicating that the Department had reason to believe she intentionally violated a food stamp rule. The form also included the following:

Based on the evidence developed through our investigation, the agency believes that ----- intentionally violated the food stamp program by: not reporting correct household circumstances or income. The evidence to prove this allegation consists of applications, FEFU statement, narrative from Child Support.

- 3) The Department's position is that the Defendant withheld information that her child's father, --- --, was living with her and that both he and the Defendant received lump sum payments that are over the asset limit rendering them ineligible for SNAP. The evidence shows that ----- has no income, and the Defendant's only income is from child support in the amount of fifty dollars (\$50.00). The evidence also shows that ----- received a lump sum payment of approximately forty six thousand dollars (\$46,000.00) at some time around October 2008. The Defendant testified that she received a lump sum of fifty thousand dollars (\$50,000.00) in June 2009. The Department purports that these lump sum payments were not reported by the Defendant and the information was intentionally withheld in order to receive SNAP.
- 4) The Defendant testified that she did report the lump sum she received; however, there is no other evidence to support this contention. The Department's case comments (D-11) show that the Defendant was informed on July 16, 2009 that the Department had information about the lump sum payments and that ----- lived with her. The recording also documents that she did not deny the information.
- 5) The Defendant contends that ----- does not live with her and that she reported the lump sum she received. She testified that she has no knowledge of the lump sum he received as he does not discuss his finances with her.
- 6) WV Income Maintenance Manual Section 1.4.R.3 states in pertinent part:

Categorical Eligibility

Categorical Eligibility may be determined at any time as long as the eligibility requirements are met.

a. Who is Eligible

(1) Mixed AG's [sic]

When an AG has at least one member who is authorized to receive benefits from TANF-funded programs or is authorized to receive information and referral services about TANF and other department programs, the AG is categorically eligible. Authorized to receive means the AG is coded in the data system as active for a benefit whether they are receiving it or not. Those authorized to receive include individuals who have been determined eligible for benefits and notified of the determination, even if benefits have not been received

or accessed or the benefits have been suspended, recouped or not paid because they are less than a minimum amount or they have not yet received the information or referral.

EXAMPLE: A person applies for SNAP benefits and is authorized to receive information and referral services about TANF-funded programs. The DFA-SNAP I&R-1 is mailed out the day of approval and the client receives it 5 days later. The client is categorically eligible from the day of application even though the DFA-SNAP-I&R-1 is received 5 days later.

(b) Authorized for Information and Referral Services

AG's [sic] with income at or below 130% FPL are authorized to receive information and referral services. The DFA-SNAP I&R-1 is mailed to the AG by RAPIDS to inform the client of potential programs or services available to him. The DFA-SNAP I&R-1 is paid for by TANF/MOE funds.

c. Presumed Eligibility Requirements

Once it is determined that an AG is qualified for Categorical Eligibility, the following eligibility requirements are presumed to be met.

- Asset Limit. The transfer of assets policy is applied as appropriate.
- Gross income limit, when applicable
- Net income limit
- Sponsored alien information
- Residency
- SSN information

- 7) The WV Income Maintenance Manual Chapter 10, Appendix A states that 130% of the Federal Poverty Level (FPL) for a family of five (5) is two thousand seven hundred ninety four dollars (\$2,794.00). The Defendant's household income of fifty dollars (\$50.00) monthly is well below this amount; therefore, the Defendant is authorized to receive information and referral services thereby affecting the AG to be categorically eligible for SNAP, which means the asset test for the AG is presumed to be met.
- 8) The West Virginia Income Maintenance Manual Section 11.4.C.C. provides that lump sum payments are counted as assets for SNAP.
- 9) 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.
- 10) 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.

- 11) 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.
- 12) 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.
- 13) 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.

7) I understand that if I receive SNAP benefits I have to report when my total household income exceeds the SNAP gross income limit. I also understand that I will be notified what this amount is and that I must report this to DHHR by the 10th of the month after the increase happens. I also understand that if my household lives in a time-limited county and contains an ABAWD, I must report when that person's work hours are reduced to less than 20 hours a week, averaged monthly. I understand that none of the other SNAP reporting requirements listed on this form apply to my household.

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.

14) 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) Policy also provides that AGs with income below 130% of the FPL are considered “authorized to receive information and referral services,” which renders them a categorically eligible AG. Categorically eligible AGs are not required to meet an asset test as the asset test is presumed met.
- 4) Although the evidence shows that ----- may have lived with the Defendant at some point, it has not been shown clearly and convincingly that the Defendant intentionally withheld this information in order to receive SNAP. ----- has been shown to have no income and had he been added to the Defendant’s SNAP her benefits would have increased; not decreased.
- 5) The evidence shows that the Defendant did not report the two lump sum payments to the Department; however policy did not require her to report this information. The Defendant was only obligated to report when her total household income exceeded the SNAP gross income limit of two thousand seven hundred ninety four dollars (\$2,794.00), which it did not. The lump sum payments are considered as assets, not income, for SNAP.
- 6) The Department was not 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 **reversed.**

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of March, 2010.

**Cheryl Henson
State Hearing Officer**