



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 10, 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 2, 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 May 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-639

**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 2, 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 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 January 5, 2010
- D-2 WV Income Maintenance Manual §1.2.E
- D-3 Food Stamp Claim Determination form with accompanying documents
- D-4 Code of Federal Regulations 7CFR273.16
- D-5 Combined Application Form (CAF) dated December 22, 2008
- D-6 Rights and Responsibilities form dated December 22, 2008
- D-7 Individual Demographics form from RAPIDS computer system
- D-8 Case Comments from RAPIDS computer system
- D-9 Combined Application Form (CAF) and accompanying forms dated June 23, 2009
- D-10 Rights and Responsibilities forms dated June 23, 2009
- D-11 Income Verification from Statewide Service dated July 24, 2009
- D-12 Combined Application Form (CAF) dated November 5, 2009
- D-13 Rights and Responsibilities forms dated November 5, 2009
- D-14 Combined Application Form (CAF) dated December 28, 2009
- D-15 Rights and Responsibilities forms dated November 5, 2009
- D-16 Employment data from Statewide Service dated January 5, 2010
- D-17 Notification letters dated January 12, 2010
- D-18 Sworn written statement dated July 21, 2009 from -----
- D-19 Sworn written statement dated January 12, 2010 from -----
- D-20 WV Income Maintenance Manual Section 2.2
- D-21 WV Income Maintenance Manual Section 2.2.B.3
- D-22 WV Income Maintenance Manual Section 20.6
- D-23 WV Income Maintenance Manual Section 20.2
- D-24 WV Income Maintenance Manual Section 20.2.C.2

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 January 14, 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 January 12, 2010 the Department sent the Defendant a Notification of Intent to Disqualify (D-17) 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 that -----was in the home. The evidence to prove this allegation consists of applications, letters, income [sic] verification.

- 3) The Department presented evidence to show that the Defendant completed a review (D-5) for WV WORKS cash assistance and SNAP on December 22, 2008 at which time she reported that her household included herself and one child. She reported that she pays utilities only and no rent. She also signed (D-6) the Rights and Responsibilities form indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so. The Defendant did not report -----lived with her at this time.
- 4) The Department presented evidence (D-8) which shows that its Child Support Unit entered a recording into the computer system on May 12, 2009 indicating that they spoke with -----by telephone and he informed them that technically he does not live with the Defendant. He explained that they live in the same dwelling but he lives on one end and she lives on the other end.
- 5) Evidence (D-8) from the Department of Motor Vehicles shows that on May 12, 2009 -----was issued a driver's license showing that he lived at [REDACTED] in [REDACTED] West Virginia. The Defendant was also listed as living at this address during this timeframe.
- 6) The Defendant completed a case review for WV WORKS and SNAP on June 23, 2009 (D-9) at which time she reported that -----does not live in her household. She provided a statement from -----dated June 12, 2009 in which he stated that he gives the Defendant permission to live rent free at [REDACTED] in [REDACTED] West Virginia. He also added that he stayed at this address with the Defendant from March 23, 2009 to April 5, 2009. He reported that he then moved to -----, in [REDACTED] West Virginia.
- 7) The Defendant signed Rights and Responsibilities forms (D-10) on June 23, 2009 indicating that she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 8) The Department provided evidence (D-11) to show that -----listed his mailing address with his employer as [REDACTED] in [REDACTED] West Virginia as of July 24, 2009.

- 9) The Defendant completed a WV WORKS and SNAP application on November 5, 2009 (D-12) at which time she again reported that ----did not live with her. She signed Rights and Responsibilities forms (D-13) again indicating that she understood her responsibility to report accurate and truthful information.
- 10) The Defendant completed an application for benefits on December 28, 2009 again reporting that ----did not live with her, and again signed Rights and Responsibilities forms (D-15) indicating she understood her responsibilities of reporting accurate and truthful information.
- 11) The Department provided evidence (D-18) in the form of a sworn written witness statement from a neighbor living at [REDACTED] dated July 21, 2009 in which the witness states that she knows the Defendant and ----. She added that she sees them every day or every other day and that their kids play together. She added that they are good neighbors. This witness was not available for cross examination during the hearing.
- 12) Another sworn written witness statement (D-19) dated January 12, 2010 provides that the witness works for the Defendant's landlord. He provided that ----was evicted from that home during December 2009 along with a woman and two children that lived with him. This witness was not available for cross examination during the hearing.
- 13) The Defendant testified that she lived with ----on [REDACTED] as well as at [REDACTED]. She denied living with him at [REDACTED]. She stated she lived with him from August 2009 until the present time. She continued by adding her life is unstable, and that she has been living "here and there" for the last six (6) months. She stated she was living in "bags" and cannot say that she was living with ----because she was "back and forth". She also offered that she may not have understood the Rights and Responsibilities forms and did not read them.
- 14) 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.
- 15) 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.

- 16) 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.
- 17) 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.
- 18) 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.
- 19) 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 evidence shows the Defendant was aware of her responsibility to report accurate and truthful information and the penalties for failure to do so. The Defendant's claim that she did not read or understand the Rights and Responsibilities forms is not credible. She signed at least three (3) of these forms at which time a Department employee also signed below her signature, and there is no indication that the Defendant reported or claimed at that time that she could not read or did not understand what she was signing.
- 4) The Defendant's testimony in regard to her household composition for the period in question is found to be contradictory in nature and therefore is given little weight. She at one point reports a time frame where she lived with -----and then at another point she denies living with him. Her testimony does not align with the evidence.
- 5) The written statements support that the Defendant and -----live together. The evidence shows that -----at one point admitted to living with the Defendant but later denied living with her. The evidence from the Department of Motor Vehicles supports that the Defendant lived with -----, as well as the evidence supplied by -----' employer.
- 6) The totality of the evidence shows clearly and convincingly that the Defendant lived with ----- and did not report this information on numerous occasions during interviews with the Department. The Defendant intentionally withheld information about her household composition in order to receive SNAP. -----was employed during the timeframe involved and his income would have affected her eligibility for SNAP had he been included.
- 7) 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 May 1, 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 11th Day of March, 2010.

**Cheryl Henson
State Hearing Officer**