



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

Joe Manchin III  
Governor

Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

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

March 26, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 5, 2010 for the purpose of determining whether or not an Intentional Program Violation occurred.

In arriving at a decision, the State Hearings 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 (SNAP) is based on current policy and regulations. These regulations provide that an 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 (Code of Federal Regulations - 7 CFR § 273.16).

The information submitted at your hearing revealed that while you did not have primary custody of your daughter -----, she lived with you until January 2010.

It is the decision of the State Hearings Officer to **Reverse** the proposal of the Department to impose an Intentional Program Violation against you.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Christine Allen, Repayment Investigator

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

-----,

**Defendant**

**v.**

**Action Number: 10-BOR-716**

**West Virginia Department of  
Health and Human Resources,**

**Movants**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 5, 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 fair hearing was convened on March 5, 2010.

**II. PROGRAM PURPOSE:**

The Program entitled Supplemental Nutrition Assistance Program (SNAP) is administered by the West Virginia Department of Health & Human Resources.

The purpose of 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 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

-----, Witness for Defendant

Christine Allen, Repayment Investigator

Presiding at the Hearing was Kristi Logan , State Hearing Officer and a member of the Board of Review.

This hearing was held by videoconference.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not Defendant committed an Intentional Program Violation.

**V. APPLICABLE POLICY:**

WV Income Maintenance Manual § 1.2 E and 9.1 A  
Code of Federal Regulations- 7 CFR § 273.16

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 SNAP Claim Determination Form
- D-3 SNAP Issuance History Screen (IQFS) from RAPIDS Computer System
- D-4 SNAP Allotment Determination Screen (EFAD) from RAPIDS Computer System
- D-5 SNAP Claim Calculation Sheet
- D-6 Case Members History Screen (AQMC) from RAPIDS Computer System
- D-7 Case Comments (CMCC) from RAPIDS Computer System
- D-8 Shared Parenting Order dated December 2, 2009
- D-9 Narrative (TRNA) from OSCAR Computer System
- D-10 Notification Letter dated December 18, 2009
- D-11 Combined Application Form dated December 17, 2009
- D-12 Rights and Responsibilities Form dated December 17, 2009
- D-13 Repayment Notification Letter dated January 12, 2010
- D-14 Notification of Intent to Disqualify dated December 29, 2010
- D-15 WV Income Maintenance Manual § 1.2 E
- D-16 WV Income Maintenance Manual § 9.1 A
- D-17 WV Income Maintenance Manual § 20
- D-18 Code of Federal Regulations- 7 CFR § 273.16

**Defendant's Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from Department of Health and Human Resources' Repayment Investigator, Christine Allen, on January 27, 2010. The Department contends that the Defendant has

committed an Intentional Program Violation (IPV) and is recommending that he be disqualified from participation in SNAP for 12 months.

- 2) Defendant applied for SNAP on December 17, 2009. He reported his household consisted of himself and his daughter ----- . SNAP benefits were approved based on the information provided (D-1 and D-7).
- 3) The Bureau of Child Support Enforcement (BCSE) received a shared parenting order from the Mercer County Family Court dated December 2, 2009 that granted custody of ----- to her mother, ----- (D-8). The Department also submitted a copy of the narrative from BCSE's computer system where -----reported to her BCSE worker that ----- had been living with her since August 2009 (D-9).
- 4) The Department contends Defendant made a false statement at his SNAP application by reporting his daughter as residing in his home when she had been residing with her mother. The result was an overpayment of SNAP benefits of \$245.
- 5) Defendant testified that he and -----had a difficult break up which resulted in mutual Domestic Violence Petitions. Defendant stated eventually he and -----were able to be amicable to one another and work out a visitation schedule for the children. Defendant stated they were unable to follow the court ordered visitation schedule due to their schedules. Also during this time, Defendant had custody of -----.

Defendant stated he had a job opportunity out of state and they went back to court in December 2009 so that -----could be given custody of ----- . The job opportunity did not come through and ----- continued to live with Defendant until January 2010.

Defendant stated that they went back to court over custody of the children not only because he was expecting to begin working out of state, but also in case he and ----- started having problems again, an order would already be in place.

- 6) ----- testified that ----- lived with Defendant from June 2009 until January 26 or 27, 2010. There were times during the summer that ----- stayed with her but once school started in the fall, she lived full-time with Defendant.

-----stated she did not recall ever reporting to BCSE that ----- had been living with her since August 2009. -----felt like the caseworker may have confused -----'s child support case with that of Defendant's other child, of whom -----is not the mother.

- 7) WV Income Maintenance Manual § 1.2 E states:

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. When the client is not able to provide the required verification, the Worker must assist him. The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions:

- Denial of application

- Closure of the active Assistance Group (AG)
- Removal of the individual from the AG
- Repayment of benefits
- Reduction in benefits

8) WV Income Maintenance Manual § 9.1 A(2)h states:

Persons who have been found guilty of an Intentional Program Violation (IPV) are disqualified [from SNAP] as follows:

- 1st offense: 1 year
- 2nd offense: 2 years
- 3rd offense: Permanent

9) WV Income Maintenance Manual § 9.1 A (1) states:

The SNAP AG must include all eligible individuals who both live together and purchase and prepare their meals together. When an individual, who is included in the AG, is absent or is expected to be absent from the home for a full calendar month, he is no longer eligible to be included in the AG, and must be removed after proper notice.

10) Code of Federal Regulations- 7 CFR § 273.16 states:

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 [SNAP] Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp coupons.

## **VIII. CONCLUSIONS OF LAW:**

- 1) In order for an Intentional Program Violation to be established, it must be shown by clear and convincing evidence that the Defendant intentionally made a false or misleading statement or withheld or concealed facts from the Department.
- 2) Credible testimony provided by Defendant and ----- indicate that although -----was awarded primary custody of ----- in December 2009, she remained in Defendant's home until the end of January 2010.
- 3) There was no evidence provided by the Department to establish that ----- was not living with Defendant during the time period in question.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to impose an Intentional Program Violation against Defendant.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 26<sup>th</sup> day of March 2010.**

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**Kristi Logan**  
**State Hearing Officer**