



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

April 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 April 6, 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 June 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-816

**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 April 6, 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

-----, [REDACTED], Claimant's employer and witness

Natasha Jemerison, State Repayment Investigator, Department Representative
Tammy Drumheller, Front End Fraud Investigator, Department 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 January 14, 2010
- D-2 WV Income Maintenance Manual §1.2.E
- D-3 Food Stamp Claim Determination and accompanying forms
- D-4 Code of Federal Regulations §7CFR273.16
- D-5 Case comments from RAPIDS computer system dated May 2009
- D-6 Case comments from RAPIDS computer system dated June 2009 and hearing decision Dated December 3, 2009
- D-7 Combined Application Forms (CAF) and Rights and Responsibilities forms for dates October 12, 2006, December 6, 2006, March 29, 2007, July 9, 2007, September 27, 2007, December 1, 2007, March 7, 2008, July 16, 2008, March 31, 2008, November 20, 2008, March 19, 2009, April 9, 2009, July 14, 2009, and September 24, 2009
- D-8 Notification letters sent to the Defendant dated January 14, 2010
- D-9 WV Income Maintenance Manual Section 20.6
- D-10 WV Income Maintenance Manual Section 20.2.2
- D-11 WV Income Maintenance Manual Section 20.2.E

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 February 10, 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 14, 2010 the Department sent the Defendant a Notification of Intent to Disqualify (D-8) 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 ----- in the home. The evidence to prove this allegation consists of statements, income verification, applications, hearing decision upholding the Department.

- 3) The Department presented evidence to show that the Defendant failed to report that -----, the father of two her children, lived in her home for a period of time when she was receiving SNAP. The question for this hearing is whether this omission was intentional in order to receive SNAP. The parties agree that if ----- were included in the Defendant's SNAP his income would render the household ineligible.
- 4) The Department presented as evidence a copy of a previous fair hearing decision (D-6), Action Number 09-BOR-2186, rendered against the Defendant and dated December 3, 2009, in which it was shown that as of December 3, 2009 -----'s reported address with the West Virginia Department of Motor Vehicles was listed as -----, Charleston, West Virginia, 25302 which is also the Defendant's physical address. The date of issuance for the license is September 15, 2005, however it is not evident as to when this address was entered into their system.
- 5) In addition, the decision (D-6) showed that it was determined as fact that the West Virginia Bureau for Child Support's OSCAR computer system also showed -----'s listed address matched the Defendant's. The evidence was found to be dated April 9, 2009 and also showed that the court verified the address on October 3, 2006.
- 6) Further, the decision (D-6) also showed that it was found as fact that the Defendant and -----'s addresses matched during an online search engine check of whitepages.com performed by the Department on April 9, 2009.
- 7) The decision (D-6) also documents that Tammy Drumheller, a Front End Fraud Investigator for the Department, testified during that hearing that she interviewed numerous neighbors on [REDACTED] Street, which is the street on which the Defendant resides, during her investigation around the timeframe of May 2009 and they all indicated that they believed ----- lived with the Defendant. It is also documented (D-6) that she obtained evidence from -----'s employer around this timeframe which showed his current address listed as the same as the Defendant's.
- 8) The decision (D-6) also notes that the Defendant testified at that time that ----- was at her house quite frequently, but did not stay the night. She testified that he took the children to ball practice every day and is very active in their lives. She also stated that ----- has eaten meals at her home and often cooked dinner for the children while she was away at work, but that this did not occur more than fifty percent (50%) of the time. She also stated that he sees the children every day. The decision documented that she stated that during 2004 and 2005 he "almost" lived with her for a few months because they were getting along very well during that time. The Defendant's testimony during the December 3, 2009 hearing (D-6) was found to be contradictory and not reliable.

- 9) The December 3, 2009 decision (D-6) found that it was shown by a preponderance of the evidence that ----- lived with the Defendant during the period of July 1, 2009 through September 30, 2009.
- 10) The Department contends that ----- lived with the Defendant from October 2006 through January 2010, and has drafted a SNAP claim determination (D-3) which purports that the Defendant was over-issued SNAP in the amount of fourteen thousand two hundred forty six dollars (\$14, 246.00). This claim determination is not at issue for this hearing.
- 11) The Defendant purports that she has never intentionally withheld or given false information to the Department during applications for SNAP. She testified that she and her children are the only individuals who have ever lived in her household. She stated that ----- has never physically lived in her home. She added that he has stayed the night before, but has never lived with her and does not provide financial support other than his child support obligation.
- 12) The Defendant's employer, -----, testified that as far as he knows ----- does not live with the Defendant. He stated that the Defendant has worked for him almost seven years. He stated he has seen ----- pick up the children. He stated he has been to her home a couple of times monthly to pick her up for work. He does not know whether ----- is there daily, but on the days he has been there he has not seen him. He has been there around seven o'clock in the morning and after work late in the evening. He added he has seen ----- with the children before. He testified that he lives in [REDACTED] County, West Virginia, which is a surrounding county.
- 13) 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.
- 14) 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.
- 15) 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.

- 16) 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.
- 17) The Defendant signed numerous Rights and Responsibilities forms (D-7) during the period of October 12, 2006 through September 24, 2009, 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.
- 18) 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 and truthful information and the penalties involved for failure to do so. She completed numerous application forms and Rights and Responsibilities forms during the period of October 12, 2006

through September 24, 2009 which clearly shows she was aware of her responsibilities and the applicable penalties.

- 4) The evidence is clear in that the Defendant intentionally withheld information about her household composition in order to receive SNAP. The Defendant applied for SNAP on September 24, 2009 at which time the totality of the evidence shows clearly and convincingly that ----- lived in her household. The Defendant's claims that he is in her household to see the children every day but does not live with her are not supported by the evidence. She falsely reported that he did not live with her in order to receive SNAP.
- 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 June 1, 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of April, 2010.

**Cheryl Henson
State Hearing Officer**