



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

May 7, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Supplemental Nutrition Assistance Program (SNAP / Food Stamp) Administrative Disqualification Hearing held April 15, 2010 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred.

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 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 fails to demonstrate that you committed 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/Food Stamp disqualification penalty against you based on an Intentional Program Violation.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
Roger Kimble, Repayment Supervisor, WVDHHR

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

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**Defendant,**

**v.**

**Action Number: 10-BOR-842**

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

**Respondent.**

**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 15, 2010.

**II. PROGRAM PURPOSE:**

The purpose of the **SNAP 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:**

Teresa Smith, Repayment Investigator (RI), WVDHHR

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

**IV. QUESTIONS 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 Supplemental Nutrition Assistance Program (SNAP).

**V. APPLICABLE POLICY:**

7 CFR §273.16 USDA Code of Federal Regulations  
WVDHHR Common Chapters Manual, Chapter 700  
West Virginia Income Maintenance Manual, Chapter 1.2 and 20.2

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

**Department's Exhibits:**

- D-1 Combined Application and Review Form dated November 2, 2009
- D-2 Electronic Benefit Transfer (EBT) Transaction History – November 14, 2009 through January 6, 2010
- D-3 Written statement from [REDACTED] dated January 19, 2010
- D-4 Notification of Intent to Disqualify (ig-br-44a) and Waiver of Administrative Disqualification Hearing.
- D-5 WV Income Maintenance Manual, Chapter 1.2 & WVDHHR Common Chapters Manual, Section 740

**VII. FINDINGS OF FACT:**

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from the Department of Health and Human Resources, hereinafter Department, on February 18, 2010. The Department 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) Notification of the April 15, 2010 hearing was personally delivered to the Defendant during a visit to the [REDACTED] County Department office on March 11, 2010.
- 3) The hearing convened as scheduled at 10:00 a.m., and as of 10:15 a.m., the Defendant failed to appear. As set forth in the Code of Federal Regulations found at §7 CFR 273.16 (e) (4), and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 740.20), the hearing was conducted without the Defendant in attendance.
- 4) On April 26, 2010, the Defendant's written response to establish good cause for failure to appear without notice was received timely and states, in pertinent part – "I am currently a student at [REDACTED] Community College studying re Fridgeration [sic], air conditioning, and heating technology. During the week of the fifteenth I was working on a seven page research paper about the Internet [sic] for my english [sic] 101 class." Pursuant to the West Virginia Department of Health and Human Resources, Common Chapters Manual §740.20.A, good cause includes, but is not limited to - Death in the family; Personal illness or injury; Sudden or unexpected emergency. Because the Defendant's written response to establish good cause fails to meet this standard, good cause cannot be granted.

- 5) The Department's representative, Teresa Smith, testified that the Department received a complaint that the benefit group was selling benefits from their EBT card for cash. The Department submitted Exhibit D-2 (EBT Transaction History) and testified that the transactions on November 4, 2009, December 6, 2009 and January 3, 2010 indicate unusual activity. [REDACTED] a member in the Defendant's assistance group, provided a written statement to the Department (D-3) on January 19, 2010 indicating that she could not explain the multiple purchases but that she wouldn't have sold her benefits as she has no other way to feed her baby.
- 6) The Department presented evidence to indicate the Defendant and [REDACTED] completed an application for SNAP benefits on November 2, 2009 and marked "yes" to #1 and #4, on the Rights and Responsibilities (DFA-RR-1). Sections #1 and #4 read as follows:
- 1) I understand that SNAP benefits are to be used by my family and me to purchase food or seeds. I cannot sell my SNAP benefits or use someone else's benefits for myself. The SNAP benefits will not be used for any other purpose. I understand that I may not use my EBT SNAP benefits to purchase food on credit. This means I cannot pay for food already purchased or food to be received in the future.
  - 4) I understand if I am found (by court action or 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. In addition, I will have to repay any benefits received for which I was not eligible.
- 7) 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.
- 8) Common Chapters Manual 740.11.D states as follows:
- 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.

- 9) 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), 2<sup>nd</sup> Offense: 2 years (Disqualification), 3<sup>rd</sup> Offense: Permanent
- 10) Common Chapters Manual 740.22.M states that the Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence that demonstrates that the defendant committed, and intended to commit, Intentional Program Violation as defined in Section 740.11. The Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing. In rendering a decision, the Hearing Officer shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and court orders. The decision shall include reference to all pertinent law or policy.

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

- 1) The regulations that govern SNAP (Food Stamp) state that 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 constitutes a violation of the Food Stamp Act.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 3) The evidence submitted by the Department reveals an “unusual” pattern of purchases by the Defendant’s household but fails to meet the clear and convincing evidentiary requirement needed to support the conclusion that an Intentional Program Violation occurred.
- 4) Based on the evidence, a SNAP/Food Stamp disqualification penalty cannot be applied to the Defendant’s case.

#### **IX. DECISION:**

The Department’s proposal to apply a one (1) year SNAP/Food Stamp benefit 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 \_\_\_\_ Day of May, 2010.**

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**Thomas E. Arnett  
State Hearing Officer**