



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D.
Cabinet Secretary

July 15, 2011

-----and -----

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 July 12, 2011 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 the Supplemental Nutrition Assistance Program, hereinafter, SNAP (formerly 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: An Intentional Program Violation consists of having intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts; or committed any act that constitutes a violation of the Food Stamp Act, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. 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 reveals that you intentionally provided false and misleading information about your household income in order to receive SNAP benefits to which you were not entitled.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. This disqualification will begin effective September 1, 2011.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Melissa Barr, RI, DHHR

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

----- AND -----,

Defendants,

v. **Action Number:** **11-BOR-1016 (-----)**
11-BOR-1017 (-----)

**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 concluded for ----- and ----- . 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 July 12, 2011.

II. PROGRAM PURPOSE:

The purpose of the **Supplemental Nutrition Assistance Program** (SNAP), formerly Food Stamp 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:

-----, Defendant

-----, Co-Defendant

Melissa Barr, Repayment Investigator (RI), DHHR

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendants committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in the SNAP.

V. APPLICABLE POLICY:

7 CFR § 273.16 USDA Code of Federal Regulations
Common Chapters Manual, Chapter 700
West Virginia Income Maintenance Manual, Chapters 1.2, 9.1, 10.4 & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WVDHHR Benefit Recovery Referral, dated August 30, 2010
- D-2 IG-BR-44 (Notice of Intent to Disqualify) dated April 4, 2011
- D-3 7 CFR § 273.16 USDA Code of Federal Regulations
- D-4 Verification from [REDACTED] Associates of a monthly trust payment to ----- of \$750 per month effective December 15, 2008.
- D-5 Two Combined Application and Review Forms (Received February 12, 2009 and February 1, 2010) - A SNAP telephone review (completed on August 7, 2009) – accompanied by four (4) applications/reviews for Medicaid for Children, Pregnant Women and WV CHIP (completed April 27, 2009, May 7, 2009, January 12, 2010 and May 26, 2010)
- D-6 West Virginia Income Maintenance Manual, Chapter 1.2.E and 2.2.B
- D-7 West Virginia Income Maintenance Manual, Chapter 20.2

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from Repayment Investigator Melissa Barr on April 20, 2011. Ms. Barr contends that the Defendants have committed an Intentional Program Violation and is recommending that the Defendants be disqualified from participation in the Supplemental Nutrition Assistance Program, hereinafter SNAP (formerly Food Stamp Program), for a period of one (1) year.
- 2) The Department contends that the Defendants intentionally violated SNAP regulations by failing to report monthly household income of \$750 through a trust fund (D-4) for ----- that started on December 15, 2008. The Department noted that the Defendant and/or the Co-Defendant have completed no fewer than seven applications (D-5) since the onset of the monthly payment - Two Combined Application and Review Forms for SNAP (Dated February 17, 2009 and February 1, 2010), a telephone review for SNAP on August 7, 2009, as well as applications for WV CHIP/Children's Medicaid and Pregnant Woman Medicaid (received on

April 17, 2009 - May 7, 2009 – January 12, 2010 and February 1, 2010) – and none of these applications include the \$750 monthly income. Testimony presented by the Department reveals that the \$750 trust income was not reported until July 2010.

- 3) The Defendant and Co-Defendant purported that they were of the understanding that their lawyer contacted the Department and reported the monthly onset of income received through the trust account.
- 4) A review of the information submitted in Exhibit D-5 reveals that neither the Defendant nor the Co-Defendant reported the \$750 monthly trust income in any of the applications they completed/signed. While the Defendant and Co-Defendant contend that they did not intentionally provide false or misleading information about their household income, the evidence demonstrates they withheld, omitted, or failed to report this income on seven different occasions. This clearly establishes intent.
- 5) The Rights and Responsibilities forms completed and signed by the Defendants (D-5) on February 12, 2009, August 5, 2009 and January 30, 2010 were marked “yes” to item #4 on the forms which state:

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 Food Stamp 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.

By signing the DFA-RR-1, the Defendants certified that they read, understood, and accepted the rights and responsibilities, and that all of the information provided was true and correct.

- 6) West Virginia Income Maintenance Manual, Chapter 10.4:
This section contains policy relating income disregards and deductions and to computation of and eligibility for SNAP benefits. SNAP Eligibility and benefit amounts are based on the countable income {emphasis added} and the number in the Assistance Group (AG).
- 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) Pursuant to West Virginia Income Maintenance Manual, Chapter 2.2.B., all SNAP AG’s must report changes related to eligibility and benefit amount at application and redetermination.
- 9) West Virginia Income Maintenance Manual, Chapter 20.2:
When a AG (assistance group) has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.

- 10) 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 members who committed the IPV. The penalties are as follows: (Chapter 9.1, A, 2, h) 1st Offense: 1 year (Disqualification)
- 11) Common Chapters Manual §740.11.D. 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.

VIII. CONCLUSIONS OF LAW:

- 1) The regulations that govern SNAP benefits state that a SNAP IPV 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 SNAP benefits.
- 2) The evidence reveals that the Defendant and Co-Defendant provided false and misleading information about their household income in order to receive SNAP benefits for which they were not legally entitled. This clearly establishes intent.
- 3) The evidence is clear and convincing that the Defendant and the Co-Defendant intentionally committed a SNAP/Food Stamp Program violation as defined in the regulations.
- 4) In accordance with SNAP policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first time offense is twelve months (one year).
- 5) Only the Defendant and Co-Defendant are subject to this disqualification. The 1-year disqualification will begin effective September 1, 2011.

IX. DECISION:

Intentionally making a false or misleading statement or misrepresenting facts to secure SNAP benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Agency's proposal to apply a SNAP/Food Stamp disqualification is **upheld**. The Disqualification period will begin effective September 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of July, 2011.

**Thomas E. Arnett
State Hearing Officer**