



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

July 5, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification Hearing (ADH) held July 5, 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 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 [SNAP] Act, the SNAP Regulations, or any State statute relating 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).

The information submitted at the hearing showed that you intentionally provided false information about your household's circumstances 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 August 1, 2011.

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**

IN RE: -----,

Defendant,

v.

ACTION NO.: 11-BOR-1150

**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 July 5, 2011.

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:

Jennifer Butcher, 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 Department's computer system dated June 28, 2011, one (1) page
- D-2 West Virginia Income Maintenance Manual §1.2.E, one (1) page
- D-3 Cod of Federal Regulations §7 CFR 273.16, thirteen (13) pages
- D-4 Application form and Rights and Responsibilities forms along with supporting documentation dated December 26, 2008, twenty-four (24) pages
- D-5 Application form and supporting documentation dated January 14, 2009, eleven (11) pages
- D-6 Application form and Rights and Responsibilities forms and supporting documents Dated July 6, 2009, twenty-two (22) pages
- D-7 Application form and Rights and Responsibilities forms dated December 3, 2009, Application form and Rights and Responsibilities forms dated July 22, 2010, Application form and case comments from Department's computer system dated July 22, 2010 and August 11, 2010, total of forty-seven (47) pages
- D-8 Final Divorce Order from Family Court of ██████████ County, West Virginia dated July 31, 2008, four (4) pages
- D-9 Temporary Order Modifying Visitation and Setting Hearing dated November 18, 2010, Three (3) pages
- D-10 West Virginia Income Maintenance Manual §2.2.B, one (1) page
- D-11 West Virginia Income Maintenance Manual §2.2.B.1, one (1) page
- D-12 West Virginia Income Maintenance Manual §2.2, one (1) page
- D-13 Food Stamp Claim Determination forms and supporting documentation, twenty-nine (29) pages
- D-14 West Virginia Income Maintenance Manual §20.6.A, one (1) page
- D-15 Notification letters dated March 31, 2011, five (5) pages
- D-16 West Virginia Income Maintenance Manual §20.2.C.2, one (1) page
- D-17 West Virginia Income Maintenance Manual §20.2, two (2) pages
- D-18 West Virginia Income Maintenance Manual §20.2.F.2, one (1) page

D-19 Verification of school attendance from Elk Elementary Center dated December 2, 2010, four (4) pages

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing, hereinafter ADH, was received by the Board of Review from the Department of Health and Human Resources, hereinafter Department, on May 11, 2011. The Department contends that the Defendant has committed an Intentional Program Violation, hereinafter IPV, and made a fraudulent statement or misrepresentation regarding her household composition in order to receive SNAP, and is recommending that she be disqualified from participation in SNAP for a period of one (1) year.
- 2) Notification of the July 5, 2011 hearing was mailed to the Defendant on or about May 17, 2011 via first class mail delivery, as the Defendant is a current recipient of benefits through the Department and resides at an address known to be good by the Department.
- 3) The hearing was convened as scheduled at 9:00 a.m., and as of 9:21 a.m. the Defendant failed to appear or notify the Board of Review of any conflict preventing her from appearing. 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 or about March 31, 2011 the Department sent the Defendant a Notification of Intent to Disqualify (D-15) form, indicating that it had reason to believe she intentionally violated a SNAP rule by reporting on numerous occasions that her children, ----- and -----, lived in her household when they did not.
- 5) The Department presented evidence to show that the Defendant completed a SNAP application interview (D-4) on December 26, 2008, at which time she reported that ----- and ----- lived in her household. She signed the application indicating she understood her responsibility to report accurate and truthful information, and by signing she also certified that all statements provided on the form were reviewed by her or read to her and that she understood them. She further certified that all information provided by her on the form was true and correct.
- 6) Additional evidence shows (D-5) that the Defendant completed an Emergency Assistance application on January 14, 2009 at which time she again reported that the two children were living in household.
- 7) Additional evidence shows (D-6) that the Defendant completed an application interview for SNAP on July 6, 2009 at which time she again reported that the two children lived in her

household. She signed the application and Rights and Responsibilities form indicating that she understood her responsibility to provide complete and truthful information and the penalties for failure to do so. She further certified that the information provided was true and correct.

- 8) Additional evidence shows (D-7) that the Defendant completed application interviews for SNAP on December 3, 2009 and July 22, 2010, at which times she again reported that the two children lived in her household. She signed the applications and Rights and Responsibilities forms indicating that she understood her responsibility to provide complete and truthful information and the penalties for failure to do so. She further certified that the information provided was true and correct. She also self-completed a West Virginia School Clothing Allowance application (D-7) on July 22, 2010, at which time she again reported that the two children lived in her household.
- 9) The Department subsequently verified (D-8, D-9) that a Final Divorce Order, dated July 31, 2008, was issued by the Family Court of [REDACTED] County, West Virginia, in which the Court ordered that the two children “shall continue to be in the sole custody of Petitioner father, and shall attend [REDACTED] school.” The Defendant was granted limited visitation with the children at that time. A subsequent Temporary Order Modifying Visitation and Setting Hearing document issued from the same court and dated November 18, 2010 shows that the Defendant’s visitation with the two children was terminated on that date.
- 10) Additional supporting evidence (D-19) shows that the child, -----, resided with her father in [REDACTED] West Virginia, and attended [REDACTED] Elementary [REDACTED] in the [REDACTED] area. The Department did not provide school attendance verification for -----.
- 11) 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.
- 12) 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 [SNAP] Act of 1977, [SNAP] regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of [SNAP].

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.
- 13) Common Chapters Manual 700, Appendix A, Section B, provides that an IPV 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 [SNAP] Act, the SNAP Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits.

14) Common Chapters Manual 700, Appendix A, Section G, states that the State Hearing Officer shall base the determination of IPV on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV as defined in Section B of this Appendix.

15) 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 SNAP state that a SNAP 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 SNAP benefits.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an IPV.
- 3) The Defendant clearly was aware of her responsibility to report truthful and accurate information and the penalties involved for failing to do so. She read and signed numerous applications and Rights and Responsibilities forms during the period in question which clearly informed her of these responsibilities.
- 4) The evidence supports that ----- and ----- did not live with the Defendant during periods when she reported that they lived in her household. The Defendant reported during application interviews conducted during a timeframe spanning from December 26, 2008 through July 22, 2010 that the children lived in her household. The evidence supports that the children lived with their father at another location. A court order dated July 31, 2008 supports that the Court awarded custody to the father, with the Defendant being granted limited visitation. Additionally, school records (D-19) also support that the children lived with their father during periods when the Defendant reported that they lived in her household. The evidence supports

that the Defendant withheld this information in order to receive SNAP. The Defendant did not appear with any evidence supporting that the children lived in her household as reported.

- 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 income.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**. The penalty will begin August 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of July, 2011.

**Cheryl Henson
State Hearing Officer**