



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

**Board of Review**  
P.O. Box 1736  
Romney, WV 26757

**Earl Ray Tomblin  
Governor**

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

July 7, 2011

-----and -----

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your Supplemental Nutrition Assistance Program Administrative Disqualification Hearing held June 16, 2011. The purpose of this hearing was to determine whether or not you intentionally committed an Intentional Program Violation.

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 is based on current policy and regulations. These regulations provide that 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).

The information which was submitted at your hearing revealed that you both withheld information concerning your son's employment at your application and multiple recertifications for SNAP benefits.

It is the decision of the State Hearing Officer to Uphold the proposal of the Department to implement a 12 month Intentional Program Violation against both of you. The disqualification penalty will begin on August 1, 2011 and will run concurrently for the next 12 months.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Lori Woodward, Repayment Investigator

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

**IN RE:    -----and -----,**

**Defendants,**

**v.**

**ACTION NO.: 11-BOR-1182**

**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 a fair hearing for -----and ----- convened on June 16, 2011. 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.

**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:**

Lori Woodward, Repayment Investigator

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

**IV.   QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Defendants committed an Intentional Program Violation and should be disqualified for one year from participation in the Supplemental Nutrition Assistance Program or SNAP.

**V. APPLICABLE POLICY:**

Code of Federal Regulations, 7 CFR § 273.16  
Common Chapters Manual, Chapter 700  
West Virginia Income Maintenance Manual, Chapter 20.2; Chapter 9.1.A.2.h

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

**Department's Exhibits:**

- D-1 Reprint of Combined Application and Review Form dated August 13, 2008
- D-2 Notice of Decision dated August 14, 2008
- D-3 OFS-2 Application/Redetermination with associated Rights and Responsibilities dated February 2, 2009
- D-4 Application for West Virginia School Clothing Allowance dated July 21, 2009
- D-5 Combined Application and Review Form with associated Rights and Responsibilities dated September 1, 2009
- D-6 Application for the Low Income Energy Assistance Program (LIEAP) dated November 24, 2009
- D-7 Combined Application and Review Form with associated Rights and Responsibilities dated March 12, 2010
- D-8 Combined Application and Review Form with associated Rights and Responsibilities dated July 28, 2010
- D-9 Combined Application and Review Form with associated Rights and Responsibilities dated September 9, 2010
- D-10 Combined Application and Review Form with associated Rights and Responsibilities dated March 11, 2011
- D-11 Income information for -----from [REDACTED] INC.
- D-12 Income information for -----from [REDACTED] INC.
- D-12a Income information for -----from [REDACTED] INC.
- D-13 West Virginia Income Maintenance Manual Chapter 10.3
- D-14 Food Stamp Claim Determination worksheet
- D-15 Notification of Intent to Disqualify dated April 6, 2011
- D-16 West Virginia Income Maintenance Manual Chapter 1.2, 2.2, 9.1
- D-17 West Virginia Income Maintenance Manual Chapter 20.2 and Common Chapters 740.11

**VII. FINDINGS OF FACT:**

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on May 12, 2011. The Department contends that the Defendants committed an Intentional Program Violation (IPV) and recommends that they both be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a twelve (12) month period.
- 2) On May 18, 2011, a Notice of Scheduled Hearing was mailed to the Defendants, via first class mail delivery to the reported address of -----, ----- . Such notice was not returned to the State Hearing Officer as undeliverable.

- 3) The hearing was convened as scheduled at 11:45 A.M., on the requested date, as of 12:00 P.M., the Defendants 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 Defendants in attendance.
- 4) On April 6, 2011, the Department issued each Defendant Exhibit D-15, Notification of Intent to Disqualify, indicating that the Department had reason to believe that both Defendants intentionally violated a SNAP rule. Each notice documents in pertinent part:

Based on the evidence developed through our investigation, the agency believes that ----- intentionally violated the food stamp program by withholding ----- earned income information.

Based on the evidence developed through our investigation, the agency believes that ----- intentionally violated the food stamp program by withholding ----- earned income information.
- 5) The Department contends that the Defendants made false statements and withheld income information concerning their son's earned income from employment at an application and multiple recertifications for SNAP benefits.
- 6) On August 13, 2008, -----, Co-Defendant completed an application for SNAP benefits (Exhibit D-1). Exhibit D-1 documents that the Co-Defendant reported that her household consisted of her husband and her two sons, [REDACTED] age 18 and [REDACTED] age 15. The Co-Defendant reported that her household income consisted of her husband's self-employment from "junking" and child support for both of her children. It shall be noted that at the time of the SNAP application, the Co-Defendant reported that both children were currently enrolled as full-time students at [REDACTED] High School. Based on the information reported at the SNAP application, benefits were approved September 1, 2008 (Exhibit D-2).
- 7) On February 11, 2009, September 1, 2009, March 12, 2010 and September 8, 2010 the Co-Defendant completed recertifications for SNAP benefits (Exhibit D-3, D-5, D-7 and D-9). During each recertification, the Co-Defendant maintained that the household consisted of herself, her husband and her two sons. Each exhibit documents that the Co-Defendant reported her husband's self-employment as the only income available to the household.
- 8) On July 21, 2009, the Co-Defendant completed Exhibit D-4, Application for West Virginia School Clothing Allowance for her two children. The exhibit documents the Co-Defendant's husband's self-employment income as the only income source available to the household.
- 9) On November 24, 2009, the Co-Defendant completed Exhibit D-6, Application for Low Income Energy Assistance Program for the household. Exhibit D-6 documents that the Co-Defendant reported income from her husband's self-employment and child support as the only income source available to the household.
- 10) On July 28, 2010, both Defendants completed Exhibit D-8, Combined Application and Review Form as part of an application for Medicaid benefits. At the application, both Defendants maintained that self-employment was the only income source available to the household. The

exhibit documents that the Defendants reported that their son, [REDACTED] was no longer a resident of the household and he was removed from the calculation of SNAP benefits on said date.

- 11) On March 11, 2011, both Defendants completed Exhibit D-10, Combined Application and Review Form as part of SNAP benefit recertification. Exhibit D-10 documents that the Defendants reported that the household consisted of themselves and their son, [REDACTED] and maintained that the only income available to the household was from self-employment.
- 12) Ms. Lori Woodward, Repayment Investigator presented Exhibit D-11, Income Information from [REDACTED] Inc., to demonstrate that [REDACTED] had been employed during the timeframe in which the Defendants applied for and recertified their SNAP benefits. Exhibit D-11 documents that [REDACTED] was hired with [REDACTED] Inc. effective July 11, 2008 and was terminated effective February 21, 2010. This exhibit documents [REDACTED] gross wages for 2008 as \$3,867.49, 2009 as \$8,730.10 and 2010 as \$929.47.

Ms. Woodward also presented Exhibit D-12 and D-12a to demonstrate that [REDACTED] had been employed with [REDACTED] while the household was receiving SNAP benefits. Both exhibits document [REDACTED] employment with [REDACTED] effective August 12, 2010 and his income from August 19, 2010 through May 28, 2011.

Ms. Woodward testified that [REDACTED] was over the age of 18 and a full-time high school student; therefore, his income should have been attributed to the household's SNAP calculation.

- 13) Co-Defendant [REDACTED] completed and signed the Rights and Responsibilities (Exhibit D-5, D-7, D-8 and D-9) section of each application and recertification for benefits. While Co-Defendant [REDACTED] completed and signed the Rights and Responsibilities portion of Exhibit D-10. Both Defendants specifically acknowledged the following question when completing each document:

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.

- 14) Ms. Woodward presented Exhibit D-14, Food Stamp Claim Determination worksheet to demonstrate that by withholding information concerning their son's employment, an overpayment of SNAP benefits was issued to the Defendants in the amount of \$9591 from September 2008 through June 2011.
- 16) West Virginia Income Maintenance Manual Chapter 10.3 documents in pertinent part:

Exceptions for All Types of Employment

SNAP-EXCEPTIONS: NOT COUNTED AS INCOME IF:

-Under 18 years old; and

-Resides with a natural, adoptive or stepparent, as a member of the same AG or as a separate AG; or resides under the parental control of an adult AG member other than a parent; and turns 18.

17) West Virginia Income Maintenance Manual Chapter 1.2 indicates:

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.

18) West Virginia Income Maintenance Manual, Chapter 9.1 indicates:

Persons who have been found guilty of an IPV are disqualified as follows:

- 1<sup>st</sup> Offense: 1 Year
- 2<sup>nd</sup> Offense: 2 Years
- 3<sup>rd</sup> Offense: Permanent

19) 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.

20) Common Chapters Manual 740.22.M states as follows:

Decision – 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, an Intentional Program Violation as defined in Section 740.11 of this Chapter. 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. If the Hearing Officer rules that the

defendant committed an Intentional Program Violation, he or she will include the length and the beginning date of the disqualification penalty.

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

- 1) The policy and regulations that govern SNAP benefits dictate that a 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 SNAP benefits.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 3) The evidence is clear that the Defendants intentionally reported false information about their household income in order to receive SNAP benefits. The Defendants reported on multiple occasions that their son [REDACTED] who was 18 years old and enrolled full-time as a high school student, lived in their household, but withheld information from the Department concerning his ongoing earned income from his employment. The evidence is clear that [REDACTED] commenced employment with [REDACTED] one month prior to the Defendants' initial application for SNAP benefits and maintained such employment and additional employment during the timeframe of August 2008 through March 2011. During such timeframe, the Defendants completed multiple recertifications for SNAP benefits and were untruthful by withholding the total amount of the household's income. The result of such willful misrepresentation at their application and recertifications for SNAP benefits was an overpayment in SNAP benefits for which the Defendants were ineligible to receive.
- 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 offense is one (1) year.
- 5) Both Defendants are the only assistance group members subject to said disqualification penalty. The one year disqualification penalty will begin August 1, 2011 and will run concurrently for the next 12 months.

#### **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 Department's proposal to apply a twelve (12) month disqualification is upheld.

#### **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.**

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**Eric L. Phillips**  
**State Hearing Officer**