



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

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

July 26, 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 19, 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 September 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-1254

**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 19, 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:

-----, Defendant
-----, Defendant's witness
-----, Defendant's witness

Natasha Jemerison, Department Representative
Tammy Drumheller, Department's 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 Department's computer system dated May 5, 2011, one (1) page
- D-2 West Virginia Income Maintenance Manual §1.2.E, two (2) pages
- D-3 [SNAP] Claim Determination forms and supporting documentation, twenty-four (24) pages
- D-4 Code of Federal Regulations §7 CFR 273.16, three (3) pages
- D-5 Application form and supporting documentation dated November 28, 2006, ten (10) pages
- D-6 Rights and Responsibilities form dated November 28, 2006, five (5) pages – front and back
- D-7 Application form dated February 12, 2007, eight (8) pages
- D-8 Rights and Responsibilities form dated February 12, 2007, five (5) pages – front and back
- D-9 Application form dated August 2, 2007 and supporting documentation, eleven (11) pages
- D-10 Rights and Responsibilities form dated August 2, 2007, five (5) pages - front and back
- D-11 Online Medicaid application dated September 30, 2007, five (5) pages
- D-12 Application form dated February 5, 2008 and supporting documentation, eight (8) pages
- D-13 Rights and Responsibilities form dated February 5, 2008, five (5) pages – front and back
- D-14 Application form dated September 30, 2008, signed August 29, 2008, six (6) pages
- D-15 Rights and Responsibilities form dated September 30, 2008, five (5) pages – front and back
- D-16 Application form dated March 10, 2009 and supporting documentation, nine (9) pages

- D-17 Rights and Responsibilities form dated March 10, 2009 and supporting documentation, six (6) pages – front and back
- D-18 Various sources of verification – employment verification dated May 11, 2011; Order of Appointment of Minor Guardian dated September 12, 2008; notarized letter by [REDACTED] undated; notarized letter by [REDACTED] undated; Disclosure and Scheduling Order in Modification Proceeding dated August 27, 2008; Child Protective Services referral information dated February 9, 2009; sworn written statement by [REDACTED] dated February 9, 2009; sworn written statement by [REDACTED] Dated April 23, 2009; copy of computer screen printout from Department's child support data system – total of twenty (20) pages
- D-19 West Virginia Income Maintenance Manual §2.2, two (2) pages
- D-20 West Virginia Income Maintenance Manual §20.6, two (2) pages
- D-21 Notification letters dated May 5, 2011 and supporting documentation, five (5) pages
- D-22 Various sources of verification – Receipt from Nationwide Insurance dated February 5, 2007; Dealer's Notice of Lien dated February 3, 2007; Dish Network service agreement Dated September 19, 2007; City National Bank checking account statement for period of December 9, 2007 through January 9, 2008; City National Bank checking account statement for period of July 5, 2007 through August 5, 2007; HealthCare Financial Services bill dated January 31, 2008 – total of nine (9) pages

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) On or about May 5, 2011 the Department sent the Defendant a Notification of Intent to Disqualify (D-21) form, indicating that it had reason to believe she intentionally violated a SNAP rule by not reporting that -----, an employed individual who is the father of her child, was living in her household. Included in the Department's notice to the Defendant was a Waiver of Administrative Disqualification Hearing form. The Defendant signed this form on May 14, 2011, and returned it to the Department indicating that she had read the notice and wished to have an administrative hearing on the matter.
- 2) 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 18, 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.
- 3) Notification of the July 19, 2011 hearing was mailed to the Defendant on or about July 14, 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. It should be noted

that this hearing was previously scheduled for July 14, 2011, but was rescheduled at the Defendant's request. The Defendant agreed to this date and to waive her thirty (30) days advance notice for the second hearing by telephone on July 9, 2011. She appeared for the July 19, 2011 hearing as scheduled.

- 4) The Department presented evidence to show that the Defendant completed a SNAP application interview (D-5) on November 28, 2006 at which time she did not report that ----- lived in her household, nor did she report his income from employment. 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. She read and signed the Rights and Responsibilities form on the same date (D-6) which further certified her understanding of her responsibilities and the penalties for failure to report accurate and truthful information.
- 5) Additional evidence shows (D-7) that the Defendant completed a SNAP application review interview on February 12, 2007 at which time she again did not report that ----- lived in her household. She also did not report his earned income from employment. She signed the application indicating she understood her responsibility to report accurate information and the penalties for failure to do so. She also signed the Rights and Responsibilities form (D-8) on the same date further certifying her understanding of her responsibilities and the penalties involved for failure to report accurate and truthful information.
- 6) Additional evidence shows (D-9) that the Defendant completed an application interview for SNAP on August 2, 2007 at which time she again did not report ----- living in her household and she did not report his income. She signed the application and Rights and Responsibilities form (D-10) indicating that she understood her responsibility to provide complete and truthful information and the penalties for failure to do so.
- 7) Additional evidence shows (D-11) that the Defendant completed an online Medicaid review on September 30, 2007 at which time she again did not report ----- living in her household and did not report his income. She signed the application electronically certifying that all statements provided on the form were read by her or to her, and that she understood the questions. Further, she certified that all the information provided on the form was true and correct.
- 8) Additional application interviews were completed (D-12, D-13, D-14, D-15, D-16, D-17) on February 5, 2008, August 29, 2008, and March 10, 2009, during which the Defendant did not report ----- was living in her household. She also did not report his earnings from employment. She signed the Rights and Responsibilities form during each of the application interviews. By signing these documents, the Defendant certified her understanding of her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 9) The Department subsequently verified (D-18) that ----- is employed with [REDACTED] Incorporated. The verification shows that ----- began employment with the company on or about January 17, 2000, and that he lists his address at the time of employment as [REDACTED]

██████████ West Virginia, ██████████ His employment ended on January 2010 with the company. The reason for termination includes a statement that purports that at some point ----- and the Defendant rented from his company.

- 10) Additionally, an undated notarized letter (D-18) from -----'s employer, ██████████ and addressed to the ██████████ County Family Court is purported by the Department to have been authored on or about February 2009. ██████████ indicates in his letter that he is writing it in regard to an upcoming court hearing scheduled for February 26, 2009 for ----- and the Defendant. He states in the letter that he is -----'s employer, and that he has been such for nine years. He adds that he sees ----- daily with his child, ██████████ He adds that his own daughter has been to "their home all summer." He asks the court to please return the child to "her parents."
- 11) Additionally, an undated notarized letter (D-18) from the secretary of the company where ----- works, ██████████ is purported by the Department to have been authored by her on or about February 2009. It is addressed to the ██████████ County Family Court. ██████████ states in her letter that she has known both ----- and the Defendant for more than three years and that she has witnessed daily interactions "of them with ██████████ together and individually." She adds, "This is the first time since ██████████ has been born the parents have been separated from her..." She also asks the court to "return ██████████ to her parents..."
- 12) Additionally, the front page (D-18) from a proceeding in the Family Court of ██████████ County, West Virginia, purported by the Department to have been completed during August 2008, shows that the Defendant and ----- are co-petitioners in the proceeding. They are listed as having the same address – ██████████ West Virginia, ██████████
- 13) Additionally, a Child Protective Services Referral for Law Enforcement form (D-18) dated February 9, 2009, shows that on or about that date the Defendant and ----- were listed as living in the same household.
- 14) Additionally, the Department obtained a sworn written statement (D-18) from the Defendant's mother on February 9, 2009. The Defendant's mother says that she has had custody of her granddaughter, ██████████ since August 2008. She adds that ----- is living with the Defendant. She added that the two were living with -----'s parents at the time of the statement. She gave the address as ██████████ West Virginia.
- 15) Additionally, the Department obtained a sworn written statement (D-18) from -----'s employer, ██████████ ██████████ provided the statement on April 23, 2009 and says that the Defendant "has been with ----- (3) years since 2006 when they moved in a mobile home on my property." He added that he sees the Defendant on a regular basis picking up ----- from work in his vehicle.
- 16) Additionally, the Department provided a copy of case comments from its child support computer system (D-18) which shows that on March 5, 2009 the Defendant reported to the child support unit that she is planning to marry ----- in the near future.

- 17) Additional evidence (D-22) shows numerous documents which show ----- utilizing the same address as the Defendant. There is a receipt dated February 5, 2007 from Nationwide Insurance Company which lists -----'s address the same as the Defendant's. There is a Dealer's Notice of Lien form dated February 3, 2007 which shows -----'s address the same as the Defendant's. The Defendant testified during the hearing that this is in regard to a vehicle the Defendant bought for her. There is a Dish Network Service Agreement form dated September 19, 2007 which shows ----- living at and requesting service at the Defendant's address. The agreement is between ----- and Dish Network for television service. There are also several bank account statements from City National Bank which shows that the Defendant and ----- were co-owners of a checking account for the period of July 5, 2007 through August 5, 2007 and also for the period of December 9, 2007 through January 9, 2008.
- 18) The Defendant testified that she lived with ----- from January 2009 through February 28, 2009 and that she did not live with him during any other timeframe. She stated that all the utilities are in -----'s name, but that he does not live with her. She stated that ----- was at her house every day when he was in town, and that he worked out of town often. She added that he rented the house so that she would have a place to stay, and added that she and ----- had been "on and off," referring to their relationship.
- 19) The Defendant's witness, -----, testified that he did not live with the Defendant during the period in question, which is November 2006 through May 2009. He stated that he is on good terms with his employer, and he does not know why his employer would say that he lived with the Defendant when he did not.
- 20) The Defendant's witness, -----, testified that she visited the Defendant during the period in question once or twice a week. She added that ----- did not live with the Defendant. On cross-examination, she conceded that ----- could have come to the Defendant's home after she left. However, she added that she has also been to the Defendant's home late at night and not seen ----- there.
- 21) 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.
- 22) 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.

- 23) 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.
- 24) 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.
- 25) 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 overwhelmingly supports that ----- lived with the Defendant during a period when she reported that he did not. The written letters and statements provided by -----'s employer and his secretary are found to be credible and clearly state that the Defendant was

living with ----- at a time when she reported to the Department that he was not. The letters written to the court by them were provided in support of the Defendant and -----, and were not provided as a means of providing harm to them. In the letters, the employer and his secretary ask the court to return the child to “her parents.” There is also a large amount of supporting documentation showing that ----- was utilizing the Defendant’s address as his own during periods when his employer reported that he lived with the Defendant and when the Defendant was reporting otherwise. The Defendant’s witness statements to the contrary are not supported by the totality of the evidence.

- 5) As a result, 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 [SNAP] 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 26th Day of July, 2011.

**Cheryl Henson
State Hearing Officer**