



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

August 15, 2011

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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) Administrative Disqualification Hearing held August 11, 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: 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 demonstrates that you intentionally provided false or misleading information about your household income in order to receive SNAP benefits to which you were not legally 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. This disqualification will begin effective October 1, 2011.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
Robert Lane, Criminal Investigator, WVDHHR

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

**IN RE: ----- (now -----),**

**DEFENDANT,**

**v.**

**ACTION NUMBER: 11-BOR-1330**

**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 August 11, 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  
Robert Lane, Criminal Investigator (CI) WVDHHR

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 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  
Common Chapters Manual Chapter 700, Appendix A  
West Virginia Income Maintenance Manual, Chapters 1.2, 2.2, 9.1, 10.4 & 20.2

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

**Department's Exhibits:**

- Exhibit A Combined Application Form (CAF), dated January 28, 2005
- Exhibit B Combined Application Form (CAF), dated August 9, 2005
- Exhibit C Combined Application Form (CAF), dated October 14, 2005
- Exhibit D West Virginia Department of Health and Human Resources Application for Low Income Energy Assistance Program (LIEAP) dated November 7, 2005
- Exhibit E West Virginia Children's Health Insurance Application dated January 18, 2006
- Exhibit F Defendant's verified "earned" income from March 1, 2005 through January 31, 2006
- Exhibit G None provided
- Exhibit H None provided
- Exhibit I Cash Grant Listing (Cash assistance received from October 2005 through February 2006)
- Exhibit J Food Stamp Issuance (Food Stamps received April 2005 through February 2006)
- Exhibit K Report of Overpayment Determination (Food Stamp) April 2005 – August 2005
- Exhibit L Report of Overpayment Determination (Food Stamp) September 2005
- Exhibit M Report of Overpayment Determination (Food Stamps and cash assistance) October 2005 through February 2006
- Exhibit N Magistrate Court Order, [REDACTED] County, West Virginia, Case Number 09F-294, Pretrial Diversion Agreement entered March 11, 2010,

## **VII. FINDINGS OF FACT:**

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review (BOR) from the West Virginia Department of Health and Human Resources, hereinafter Department, on June 15, 2011. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and is recommending that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, for a period of one (1) year.
- 2) The Department submitted Exhibit N, an [REDACTED] County, West Virginia Magistrate Court Order, wherein the Defendant entered into a Pretrial Diversion Agreement to avoid prosecution of Welfare Fraud. According to Robert Lane, a Criminal Investigator (CI) for the Department, this "Agreement" was entered into with the understanding that the charge of Welfare Fraud would be dismissed without prejudice, and that prosecution would be pursued only if the Defendant failed to pay \$3,119 restitution, in full, within the 2-year period. CI Lane testified that to his knowledge, the Defendant has made every payment and believes the full amount has been repaid. However, the "Agreement" did not address the State and Federal regulatory requirements that mandate an individuals be disqualified from participation in the SNAP when it is determined they committed an Intentional Program Violation (IPV). While the issue of an IPV and the disqualification penalty is typically addressed by the prosecutor's office, this matter was overlooked and remains unresolved.
- 3) The Department contends that the Defendant provided false and misleading information about her income in order to receive SNAP benefits to which she was not legally entitled. The "Agreement" addresses restitution of the overpaid SNAP benefits resulting from the earned income at [REDACTED] (Exhibit F) not being counted in the benefit calculation. However, the Department contends that because the Defendant withheld information about the onset of earned income, she has committed an IPV. The Department noted that the Defendant started receiving SNAP benefits (Exhibit A completed on 1/28/05) and that she completed no fewer than four (4) different applications subsequent to the onset of employment earnings (Exhibits B, C, D and E) and failed to report income from [REDACTED] that started on March 1, 2005. As a result, the Defendant received an overpayment of SNAP benefits during the period April 2005 through February 2006. It should be noted that while Exhibits J, K, L and M show the amount of overpayment by month of SNAP benefits, the amount of restitution was resolved as a result of the Pretrial Diversion Agreement. The Department is recommending a one (1) year SNAP disqualification due to the Defendant committing an IPV.
- 4) The Defendant purported that she did not believe she intentionally withheld information about her income when completing applications for benefits at the Department, yet she provided no explanation as to how, or why, she could have completed four applications with the Department, subsequent to the onset of employment earnings, and failed to report the income. The Defendant contends that she was of the impression she was

ineligible for SNAP benefits for the last 18 months and that period should count as the penalty period.

- 5) The Defendant signed the Rights and Responsibilities form when she completed her applications – Exhibit A (1/28/05) and Exhibit B (8/9/05) - and marked “yes” to item #6 which states:

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 Defendant certified that she 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 the computation of and eligibility for SNAP benefits. It also states: To determine the coupon allotment, find the countable income (emphasis added) and the number in the benefit group.
- 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) West Virginia Income Maintenance Manual, Chapter 2.2.B states that 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 (benefit 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 (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
- 11) 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.

- 12) 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 policy and regulations that govern SNAP benefits state 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) Evidence confirms that the Defendant failed to report the onset of employment income in March 2005 when she completed four (4) subsequent applications for benefits at the Department. As a result, the Defendant was overpaid SNAP benefits during the period April 2005 through February 2006. Forgetting to report earned income can happen, but four occurrences and no explanation by the Defendant clearly establishes intent - the Defendant knowingly provided false and misleading information about her household income in order to receive SNAP benefits to which she was not legally entitled.
- 3) There is clear and convincing evidence that the Defendant committed an Intentional Program Violation as defined in the SNAP policy and regulations.
- 4) Pursuant to 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) Only the Defendant is subject to this disqualification. The one (1)-year disqualification will begin effective October 1, 2011.

**IX. DECISION:**

The Department's proposal to apply a one (1)-year SNAP benefit 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 August, 2011.**

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**Thomas E. Arnett  
State Hearing Officer**