



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

August 19, 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 (ADH) held August 16, 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. The Hearing Officer takes notice that under the law the Defendant is already permanently disqualified due to her status as a drug felon, and thus the one-year disqualification will run concurrently beginning with October 1, 2011 and ending September 30, 2012, at which time the Defendant will not resume eligibility due to her lifetime drug felon status.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/-----, Kanawha DHHR

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

**IN RE:     -----,**

**Defendant,**

**v.**

**ACTION NO.: 11-BOR-1415**

**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 August 16, 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:**

Danita Bragg, 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, 9.1.A.2.h and 20.2

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

#### **Department's Exhibits:**

- D-1 Food Stamp Claim Determination Form
- D-2 Various Department computer screen prints dated July 22, 2011
- D-3 SNAP issuance history computer screen dated July 8, 2011
- D-4 Application form and Rights and Responsibilities form dated May 3, 1999
- D-5 Application form and Rights and Responsibilities form dated March 28, 2000
- D-6 Application form and Rights and Responsibilities form dated October 2, 2000
- D-7 Application form and Rights and Responsibilities form dated January 26, 2001
- D-8 Application form, Rights and Responsibilities form, and Drug Attestation Form dated April 6, 2001
- D-9 Circuit Court of [REDACTED] County, West Virginia, Court Order signed August 2, 1999
- D-10 West Virginia Income Maintenance Manual §1.2
- D-11 West Virginia Income Maintenance Manual §2.2
- D-12 West Virginia Income Maintenance Manual §9.1
- D-13 West Virginia Income Maintenance Manual §20.2
- D-14 West Virginia Income Maintenance Manual §20.6
- D-15 Code of Federal Regulations §7 CFR 273.16

#### **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 July 5, 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 circumstances in order to receive SNAP, and is recommending that she be disqualified from participation in SNAP for a period of one (1) year, based on its determination that this is a first offense. The Department specifically claims that the Defendant falsely reported on several occasions that no one in her household had been convicted of a drug felony.
- 2) Notification of the August 16, 2011 hearing was mailed to the Defendant on or about July 12, 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 10:00 a.m., and as of 10:19 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) The Department presented evidence to show that the Defendant completed a SNAP application interview (D-4) on May 3, 1999. She also completed and signed the Rights and Responsibilities form (D-4) certifying that she had read, or had someone read to her, all statements on the form and that she understood the information. She also certified that the information provided by her was true and correct. She checked “yes” beside the statement that reads in part, “I understand if I or any member of my household: B) is a convicted felon for possession, use, or distribution of a controlled substance(s) that the guilty party is **permanently disqualified**.” Although the Defendant indicated that she understood that an individual convicted of a drug felony is permanently disqualified from SNAP, there is insufficient evidence in the exhibit to show that she falsely reported or withheld information about such a drug conviction.
- 5) Additional evidence shows (D-5) that the Defendant completed a SNAP application interview on March 28, 2000, at which time she answered “no” to the question, “Has anyone in your household been convicted of a drug felony for possession, use or distribution of a controlled substance committed on or after 08/23/96?” She signed the application and Rights and Responsibilities form (D-5) on that date indicating that she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 6) Additional evidence shows (D-6) that the Defendant completed an application interview for SNAP on October 2, 2000, at which time she again reported that no one in her household had been convicted of a drug felony for possession, use or distribution of a controlled substance committed on or after August 23, 1996. She signed the application and Rights and

Responsibilities form (D-6) 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.

- 7) Additional evidence shows (D-7) that the Defendant completed a SNAP application interview on January 26, 2001, at which time she again reported that no one in her household had been convicted of a drug felony for possession, use or distribution of a controlled substance committed on or after August 23, 1996. She signed the application and Rights and Responsibilities form (D-7) 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 by her was true and correct.
- 8) Additional evidence (D-8) shows that the Defendant completed a SNAP application interview on April 6, 2001, at which time she reported that she had been convicted of a felony drug offense committed on or after August 23, 1996, which involved possession, use, or distribution of a controlled substance. She did so by signing the Drug Attestation form (D-8). She also signed the Rights and Responsibilities form (D-8) and application indicating she understood her responsibility to report accurate and truthful information and the penalties involved for failure to do so.
- 9) The Department subsequently verified (D-9) by means of a Court Order dated July 26, 1999 and from the Circuit Court of [REDACTED] County, West Virginia, which shows that the Defendant was found guilty of the felony offense of possession with intent to deliver a controlled substance. Although this court order does not indicate when the offense was committed, the Defendant signed the Drug Attestation form (D-7) indicating that the offense occurred on or after August 23, 1996.
- 10) 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.
- 11) 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.

- 12) 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.
- 13) 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.
- 14) 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:

- 1<sup>st</sup> Offense: 1 year
- 2<sup>nd</sup> Offense: 2 years
- 3<sup>rd</sup> Offense: Permanent

- 15) West Virginia Income Maintenance Manual §9.1, states in pertinent part regarding SNAP assistance group composition:

g. Individuals Excluded by Law

REASON FOR EXCLUSION – Convicted of a felony offense which occurred on or after 8/23/96 which involved possession, use or distribution of a controlled substance as defined by section 802 (6) of the Controlled Substance Act.

LENGTH OF EXCLUSION - 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. Policy also provides that a first offense involves a penalty of one-year disqualification.
- 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 the Defendant has committed a first offense IPV by falsely reporting on numerous occasions that no one in her household had been convicted of a drug felony offense which was committed on or after August 23, 1996. A court order shows that she was found guilty of a drug felony for possession of a controlled substance on July 26, 1999. The Defendant also signed a document on April 6, 2001, attesting that she had been convicted of a drug felony offense, and that the offense occurred on or after August 23, 1996. It is clear that she intentionally reported otherwise during numerous interviews conducted on March 28, 2000, October 2, 2000, and January 26, 2001, and that as a result she received more SNAP than she was entitled to receive.
- 5) The Department was correct in its determination that the Defendant has committed a first offense IPV by intentionally reporting false information about her household circumstances, and a one-year penalty is applicable.
- 6) Policy also provides that individuals who have been convicted of a felony offense which occurred on or after August 23, 1996, involving possession, use, or distribution of a controlled substance are permanently excluded from receiving SNAP.

#### **IX. DECISION:**

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**. The Hearing Officer takes notice that under the law the Defendant is already disqualified for life due to her status as a convicted drug felon, and thus the one-year disqualification applicable in this situation will be served concurrently beginning October 1, 2011 through September 30, 2012, at which time the Defendant will not resume eligibility due to her lifetime drug felon status.

#### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 19<sup>th</sup> Day of August, 2011.**

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**Cheryl Henson  
State Hearing Officer**