



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

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 18, 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 October 1, 2011.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review / Jennifer Butcher, Kanawha DHHR

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 11-BOR-1437

**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 18, 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 Recover Referral screen from Department's computer system
- D-2 West Virginia Income Maintenance Manual §1.2.E
- D-3 Code of Federal Regulations §7 CFR 273.16
- D-4 Application form and Rights and Responsibilities form dated February 12, 2010
- D-5 Case Comments screen and Case Household Information screens from Department's computer system
- D-6 Application form and Rights and Responsibilities form dated July 22, 2010, including Case Comments computer screen from Department's computer system
- D-7 Self-completed application form and Rights and Responsibilities form dated July 12, 2010
- D-8 Self-completed online application form dated October 21, 2010
- D-9 Application form and Rights and Responsibilities form dated January 25, 2011, written statement dated January 18, 2011, copy of driver's license, Case Comments from Department's computer system dated January 25, 2011
- D-10 Case Household Information screen from Department's computer system dated January 24, 2011
- D-11 Vehicle System Master Inquiry screens and Driver History Inquiry screen from Department's computer system, sworn written statement dated March 9, 2011
- D-12 West Virginia Income Maintenance Manual §2.2
- D-13 West Virginia Income Maintenance Manual §2.2.B.1
- D-14 West Virginia Income Maintenance Manual §2.2
- D-15 Request for wage information from Spartan Mining Company dated March 9, 2011, Employer Wage Data screen from Department's computer system
- D-16 Food Stamp Claim Determination forms and supporting documentation
- D-17 West Virginia Income Maintenance Manual §20.6
- D-18 Notification letters to Defendant dated June 14, 2011
- D-19 West Virginia Income Maintenance Manual §20.2.C.2
- D-20 West Virginia Income Maintenance Manual §20.2

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 12, 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 due to its determination that this is the Defendant's first offense, is recommending that she be disqualified from participation in SNAP for a period of one (1) year. The Department specifically claims that the Defendant falsely reported on several occasions that her employed husband, -----, did not live in her household.
- 2) The Defendant was notified on or about July 12, 2011 that a hearing was scheduled for August 16, 2011, at 9:00 a.m. Prior to the start of the hearing on August 16, 2011, the Defendant contacted the Hearing Officer and requested that the hearing be rescheduled due to a brief illness. The Defendant, as well as the Department representative, agreed to postpone the hearing for 2 days, and both agreed to appear for the hearing on August 18, 2011, at 9:00 a.m. No second notice was mailed to the Defendant due to the short timeframe involved.
- 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) The Department presented evidence to show that the Defendant completed a SNAP application interview (D-4) on February 12, 2010, at which time she reported that her husband, -----, did not live in her household. 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 also provided the Department with a note dated February 4, 2010, signed by both herself and -----, which provides the following:

I ----- no longer live in the household with -----, but I do pay 300.00 to her utility bills.
- 5) Additional evidence shows (D-5) that the Defendant contacted the Department on April 27, 2010, and that a worker recorded in the Department's computer system that she reported moving to a new address. The Defendant's address was updated in the Department's computer system on that date to show that she lives at -----, in [REDACTED] West Virginia.

- 6) Additional evidence shows (D-6) that the Defendant completed an application interview for SNAP on July 22, 2010, at which time she again reported that ----- did not live in her household. She also did not report his income from employment. 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 by her was true and correct.
- 7) Additional evidence shows (D-7) that the Defendant self-completed a School Clothing Allowance application form on July 12, 2010, at which time she again reported that ----- did not live in her household. She also did not report his earnings from employment. She signed the application certifying that the information provided by her was true and correct to the best of her knowledge.
- 8) Additional evidence (D-8) shows that the Defendant self-completed an online Low Income Energy Assistance Program application on October 21, 2010, at which time she reported that --- -- did not live with her. She also did not report his earnings from employment. She signed the application certifying that all statements provided on the form had been read by her or to her by another individual, and that she understood the questions. She further certified by her signature that all the information provided by her on the application was true and correct.
- 9) Additional evidence (D-9) shows that the Defendant completed a SNAP application interview on January 25, 2011, at which time she did not report that ----- lived in her household. She also did not report his earnings from employment. She reported that ----- was absent from the home and that he lived at [REDACTED] West Virginia. She signed the application and Rights and Responsibilities form indicating that she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 10) The Department subsequently verified (D-11) that ----- titled a vehicle in his name on July 22, 2010, with the West Virginia Department of Motor Vehicles, and listed his address as -----, in [REDACTED] West Virginia, which has been the Defendant's residential address of record with the Department (D-5) since April 27, 2010. Additionally, this exhibit shows that both the Defendant and ----- titled a vehicle with the same agency on February 28, 2011, also utilizing the same address. Additionally, this exhibit shows that ----- renewed his driver's license with the same agency on September 27, 2010, again utilizing the Defendant's address. Further, this exhibit contains a sworn written statement from an individual who lives in the Defendant's community. The statement is dated March 9, 2010, and the provider of the statement indicates that the Defendant and ----- live next door to her, and that they have 3 children. She also provides that they have lived there for at least a year. This witness indicated that she sees the family often, and that ----- is a coal miner.

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 the Defendant has committed an IPV by falsely reporting on numerous occasions that her employed husband, -----, did not live in her household when the evidence supports that he did. ----- clearly utilized the Defendant's address as his own, titling 2 vehicles and renewing his driver's license with the West Virginia Department of Motor Vehicles utilizing the Defendant's address; one of the vehicles titled was listed in both the Defendant's and -----'s name. In addition, a sworn written statement was provided from a neighbor from the Defendant's community, who indicated that both the Defendant and ----- lived at the Defendant's claimed address, and that they had done so for at least a year.
- 5) The Department was correct in its determination that the Defendant has committed an IPV by intentionally reporting false information about her household circumstances.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of August, 2011.

**Cheryl Henson
State Hearing Officer**