



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

October 21, 2011

RE: -----

Case No.: 11-BOR-1466

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 October 18, 2011 for the purpose of determining whether or not -----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).

Evidence submitted at the hearing demonstrates that -----intentionally provided false and misleading information and withheld facts about her household composition in order to receive SNAP benefits for which she was not legally entitled.

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to apply a 1-year SNAP disqualification penalty against -----based on an Intentional Program Violation. The 1-year disqualification penalty will begin effect December 2011.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Melissa Barr, RI, WVDHHR

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

IN RE: -----,

Defendant,

v.

ACTION NUMBER: 11-BOR-1466

**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 originally scheduled to convene on September 13, 2011, but was rescheduled at the request of the Defendant due to a scheduling conflict, and convened on October 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:

-----, Defendant

-----, Counsel for the Defendant

Melissa Barr, Repayment Investigator (RI), WVDHHR Representative

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, 9.1, & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 7 CFR §273.16 USDA Code of Federal Regulations
- D-2 IG-BR-44 (Notification of Intent to Disqualify) and IG-BR-44a (Waiver) – April 5, 2011
- D-3 Benefit Recovery Referral dated October 6, 2010
- D-4 West Virginia Income Maintenance Manual, Chapter 9.1
Request for Assistance dated July 6, 2010
Combined Application and Review Form (CAF) dated July 6, 2010
Rights and Responsibilities (DFA-RR-1) – dated July 6, 2010
Notice of Decision (Medicaid) - dated July 7, 2010
Notice of Decision (SNAP) – dated July 7, 2010
Notice of Decision (SNAP and School Clothing Allowance) - dated July 7, 2010
- D-5 In Re: The children of ----, [REDACTED] Co., WV Family Court, Civil Action No.: 04-D-260, Order Entered August 12, 2010.
- D-6 West Virginia Income Maintenance Manual, Chapter 1.2
- D-7 West Virginia Income Maintenance Manual, Chapter 20.2
- D-8 West Virginia Income Maintenance Manual, Chapter 20.2.C.2

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from the West Virginia Department of Health and Human Resources, hereinafter Department, on July 11, 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) for a period of one (1) year.

- 2) The Department submitted Exhibit D-2 to show the Defendant was notified via a Notification of Intent to Disqualify on or about April 5, 2011 and advised that she intentionally violated SNAP regulations when she completed an application on July 6, 2010 and reported -----was living in her home. The Department noted that this action was initiated upon receipt of a Benefit Recovery Referral (D-3).
- 3) The Department submitted Exhibit D-5 to show that the Defendant participated in a hearing with the Family Court of [REDACTED] County, West Virginia, on May 17, 2010, and according to this order, the Defendant's parenting schedule with ----- was every other weekend from 2:00 p.m. Saturday until 5:00 p.m. Sunday, and Tuesday and Thursday 4:30 p.m. to 7:00 p.m. The Department concluded that this verifies ----- was not residing in the Defendant's home when she completed her application for SNAP benefits on July 6, 2010.
- 4) The Department submitted information included in Exhibit D-4 to show that the Defendant reported two (2) children living in her home on the Request for Assistance form (DFA-RFA-1) completed on July 6, 2010, and that she further requested SNAP, Medicaid and School Clothing Allowance (SCA) benefits for -----and ----- in the Combined Application and Review Form (CAF) signed on July 6, 2010. The Department provided three (3) different notification letters (all of which are dated July 7, 2010) and noted that the Defendant would have had another opportunity to question the benefits awarded for ----- . The Department contends that the Defendant informed the eligibility worker that she had custody of ----- 50% of the time, however, the eligibility worker was not available to testify and documentation made by the worker was not allowed due to the ruling of hearsay evidence.
- 5) The Defendant signed the Rights and Responsibilities form (DFA-RR-1) on the day of application (Included in Exhibit D-4) and marked "yes" to item #4 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 they read, understood, and accepted the rights and responsibilities, and that all of the information provided was true and correct.

- 6) The Department contends that Defendant misrepresented, concealed or withheld facts about her household composition in order to receive SNAP benefits to which she was not legally entitled.

- 7) The Defendant, by counsel, contends that she did not commit an Intentional Program Violation because she was not advised of the policy regarding who can, or cannot, be included in the SNAP assistance group (AG). The Defendant noted that none of the documentation provided during her eligibility interview indicates that a SNAP AG may only include individuals who live together and customarily purchase and prepare their food together – over 50% of meals - on a monthly basis. The Defendant disputed that the eligibility worker advised her of this policy on July 6, 2010, and she was not provided any policy in writing. Counsel for the Defendant further noted that it was unclear if the Request For Assistance (included in D-4), indicating 2 children live in the Defendant's home [on the second page], was completed by the Defendant on the same day because only the front page includes a signature date. The Defendant testified that she marked 2 children were living in her home [on the Request For Assistance form] because she was taking care of her boyfriend's daughter ----- . As a matter of record, the Defendant acknowledged that an overpayment of SNAP benefits occurred, but she contends that she did not intentionally provide false information or withhold facts about the number of members in her household.
- 8) West Virginia Income Maintenance Manual, Chapter 9.1, provides guidelines for SNAP eligibility determination groups. This policy states that the SNAP AG must include all eligible individuals who both live together and customarily purchase and prepare their food together - "Customarily is used to mean over 50% of meals on a monthly basis."
- 9) 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.
- 10) 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.
- 11) 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), 2nd Offense: 2 years (Disqualification), 3rd Offense: Permanent
- 12) 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.
- 13) 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 the SNAP 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) The matter in dispute is whether or not the Defendant knew who should have been included in her application for SNAP benefits on July 6, 2010, and if so, did she commit an Intentional Program Violation. While the Defendant disputes being made aware of the policy requiring AG members to “purchase and prepare their meals together more than 50% of the time,” the Order resulting from the May 17, 2010 [REDACTED] County Family Court hearing clearly indicates that the Defendant was engaged in a parenting visitation schedule with ----- – every other weekend (27 hours) and every Tuesday and Thursday for 2.5 hours – an average of 18.5 hours per week.

The Defendant’s position that the second page of the Request For Assistance (included in D-4) was undated, and therefore not reliable, has no merit. Pursuant to the testimony provided by the Department, this is a one page, front-and-back document, completed and signed by the applicant at the time of application. Furthermore, the Defendant acknowledged that she reported 2 children were living in her home on the Request For Assistance form because she was taking care of her boyfriend’s daughter, -----, yet her name was not included on the application. Using the Defendant’s rationale, the application should have included ----- [her boyfriend’s daughter] and -----, or only -----, if she did not intend to include ----- in the benefits.

The issue of whether or not the Defendant was familiar with the Department's "purchase and prepare meals together more than 50% of the time" SNAP policy is not relevant. The evidence demonstrates the Defendant reported that her daughter was living with her when she was visiting an average of 18.5 hours per week. While the Defendant provided testimony to indicate she was actually counting her boyfriend's child on the Request for Information form, this is inconsistent with the information she provided on the July 6, 2011 SNAP application. The evidence is clear and convincing that the Defendant provided false and misleading information, and withheld facts about her household composition, in order to receive SNAP benefits for which she was not legally entitled. This clearly establishes intent.

- 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 December 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 October, 2011.

**Thomas E. Arnett
State Hearing Officer**