



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 E. Third Avenue
Williamson, WV 25661**

**Earl Ray Tomblin
Governor**

**Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary**

January 3, 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 held November 9, 2010 for the purpose of determining whether an Intentional Program Violation (IPV) was committed by you.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and 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.

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. [WV Income Maintenance Manual Section 20.2,C,2 and 7 CFR Section 273.16 (c)]

Information submitted at the hearing reveals that you intentionally provided false and misleading information about your household composition in order to receive SNAP benefits for which you were not entitled.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. Your disqualification from SNAP will begin effective January 1, 2011.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

-----,

Defendant,

v.

Action Number: 10-BOR-2063

**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 concluded on January 3, 2011 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. The hearing was convened on November 9, 2010.

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 Spouse

Brian Shreve, Repayment Investigator, Department's Representative

Stacy Holly, WV Bureau of Child Support Enforcement, Lincoln Office, Department's Witness

Cassandra Burns, Repayment Investigator (observing)

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

The Hearing Examiner placed all participants under oath at the beginning of the hearing.

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 SNAP.

V. APPLICABLE POLICY:

7 CFR §273.16 Code of Federal Regulations

Common Chapters Manual, Chapter 700

West Virginia Income Maintenance Manual: Chapter 1.2, Chapter 20.2; Chapter 20.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of the Code of Federal Regulations (CFR) §273.16 showing disqualifications for Intentional Program Violations.
- D-2 BVRF Screen print from RAPIDS System showing referral for recoupment.
- D-3 ES-FS-5, SNAP Claim Determination sheet.
- D-4 CMCC Screen Print from RAPIDS showing case comments made on December 16, 2009 and January 26, 2010.
- D-5 Memorandum from worker in Bureau of Child Support Enforcement, ██████████ County Office to Income Maintenance Supervisor, ██████████ County Office, and Investigations and Fraud Management investigator dated November 30, 2009.
- D-6 Employment data concerning Defendant's spouse, sent to Investigations and Fraud Management investigator on December 8, 2009.
- D-7 Statement from Defendant's landlord, dated April 27, 2010.
- D-8 Copy of Combined Application and Rights and Responsibilities forms dated and signed by Defendant on June 6, 2008.
- D-9 CMCC Screen Print from RAPIDS System showing case comments made on June 6, 2008.
- D-10 Copy of Combined Application and Rights and Responsibilities forms dated and signed by Defendant on May 29, 2009.
- D-11 CMCC Screen Print from RAPIDS System showing case comments made on May 29, 2009.
- D-12 Copy of Income Maintenance Manual Chapter 1.2.E showing customer responsibility for providing accurate information.
- D-13 Copy of Income Maintenance Manual Chapter 20.2 showing SNAP benefit claims and repayment procedures.
- D-14 Copy of Income Maintenance Manual Chapter 20.6.A showing definitions of Welfare Fraud.
- D-15 Copy of IFM-BR-44 Waiver of Administrative Disqualification Hearing form and IFM-BR-44a Notice of Intent to Disqualify form, and appointment letter for pre-hearing conference on June 24, 2010, sent to Defendant on June 14, 2010.

Defendant's Exhibits

- Def-1 Copy of Funeral Home Memorial Folder for the funeral services of -----.
- Def-2 Yahoo Mail print-out of Charleston Newspapers' Obituary for -----.

VII. FINDINGS OF FACT:

- 1) The Department is alleging an act of Intentional Program Violation, or IPV, in the Defendant's SNAP case because she allegedly failed to report that her husband was living in her home and that he received earned income, from July 2008 to September 2009.
- 2) On June 6, 2008, Defendant came into the WV Department of Health and Human Resources, [REDACTED] County office in [REDACTED] WV, and completed an application for SNAP benefits. She reported that her household consisted of herself and her son, and that the only income in Defendant's household at that time was her paid employment. At the conclusion of the application interview, Defendant signed and dated a DFA-RFA-1, a Common Application Form (CAF) which contained information she had given the worker during the interview and a DFA-RR-1, a Rights and Responsibilities form. (Exhibit D-8.) The CAF signature page states,

I understand my responsibility to provide complete and truthful information. I have reviewed or had read to me the information contained in this automated portion of the application form and I understand the information. I understand that it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits to which I am not by law entitled. Under penalty of perjury, I certify that the statements are true and correct.

The DFA-RR-1, Rights and Responsibilities form is a list of applicants' rights and responsibilities for each program for which an applicant applies. The applicant signifies that he or she is aware of each right or responsibility by checking "Yes" or "No" at each item. Under the SNAP Program section of the form, item #4 states,

I understand if I am found (by court action or administrative disqualification hearing) to have committed an act of intentional program violation, I will not receive SNAP 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.

Defendant has marked "Yes" at this item.

- 3) On March 29, 2009, Defendant returned to the [REDACTED] County office of the WV DHHR for a benefits review. She reported that she and her son were the only members of her household and that the only income in the household was her earnings. She signed another Combined Application Form and Rights and Responsibilities document (Exhibit D-10) indicating that she had provided correct information and was aware of the penalties for not doing so.
- 4) On November 30, 2009, a worker with the Bureau of Child Support Enforcement (BCSE), [REDACTED] County Office, sent a memo to a worker in the WV WORKS cash assistance program at the [REDACTED] County DHHR, indicating that Defendant's husband told the BCSE worker he was living in Defendant's home and was working. (Exhibit D-5.) On December 16, 2009, the WV WORKS worker recorded that she had received this

information (Exhibit D-4.) Also on December 16, 2009, the WV WORKS worker submitted to the Investigations and Fraud Management Unit a referral regarding Defendant's SNAP benefits, indicating that Defendant's husband lived in her home and received earned income. (Exhibit D-2.)

- 5) Department's representative presented evidence to indicate that Defendant's spouse was employed by [REDACTED] Inc., and worked there from March 31, 2008, to September 9, 2009. (Exhibit D-6.) Department's representative also presented a statement from Defendant's landlord (Exhibit D-7) which reads in pertinent part:

[Defendant] has rented from me for [the] past 9 years, in the household are her husband [Defendant's spouse] and their son [name omitted]. [Defendant's spouse] has always lived there unless they had an argument and [he] would leave for a week or two.

- 6) Defendant's spouse testified that he was employed at [REDACTED] Inc. from March 31, 2008 to September 9, 2009. However he testified that did not live with Defendant from June 2008 through September 2009. He stated that during that time he lived with a friend. He added that he could not obtain a written statement from this friend because the friend has since died. He submitted the memorial pamphlet from the friend's funeral (Exhibit Def-1) and a print-out from a [REDACTED] WV, newspaper of the friend's obituary notice. (Exhibit Def-2.) He stated that he asked the friend's widow to write him a statement indicating he lived with her, but she did not do this because "it made her nervous." Department's representative called a rebuttal witness, the BCSE worker who originally had reported that the spouse told her he lived with Defendant. Department's witness testified that the spouse told her on November 30, 2009, that he had never moved out of his wife's home.
- 7) The Code of Federal Regulations, 7 CFR §273.16(c) (Exhibit D-1), defines an Intentional Program Violation (IPV) as:

(c) Definition of intentional Program violation. 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 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).

- 8) The West Virginia Income Maintenance Manual, Chapter 1.2.E (Exhibit D-12), states:

The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility . . . The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions: denial of the application; closure of the active AG [assistance group]; removal of the individual from the AG; repayment of benefits; reduction in benefits.

9) The West Virginia Income Maintenance Manual, Chapter 9.1.A.2.h, states:

h. 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

10) The West Virginia Income Maintenance Manual, Chapter 20.2 (Exhibit D-13), states:

IPV's include making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.

11) The West Virginia Income Maintenance Manual, Chapter 20.6.A (Exhibit D-21), states:

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false . . . [I]t is not essential that an affirmative representation be made. Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false.

VIII. CONCLUSIONS OF LAW:

The Department has established that the Defendant intentionally failed to report that her husband was living in her home, and that he received earned income, during a SNAP benefits reviews on June 6, 2008 and May 29, 2009. She signed Common Application Forms to the effect that the only individuals in her household were herself and her son, and she signed Rights and Responsibilities documents indicating that she was aware of her responsibility to provide complete and accurate information and of the penalties for not doing so.

IX. DECISION:

Withholding information concerning household composition and earned income during a SNAP application is a clear violation of the regulations. Based on the evidence presented, I find the violations intentional.

The Agency's proposal to apply a SNAP disqualification is **upheld**. The Defendant will be disqualified from participation in SNAP, or the Food Stamp program, for a period of twelve (12) months to begin effective February 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd Day of January, 2011.

Stephen M. Baisden
State Hearing Officer