



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

January 13, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, Administrative Disqualification Hearing held January 4, 2011 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 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 the Supplemental Nutrition Assistance Program, hereinafter, SNAP (formerly Food Stamp Program) is based on current policy and regulations. Some of these regulations state as follows: Intentional Program Violations shall consist of having intentionally: 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 reveals that you intentionally provided false and misleading information about your household income in order to receive Food Stamp benefits to 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. This disqualification will begin effective February 2011.

Sincerely,

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

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

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

-----,

Defendant,

v.

Action Number: 10-BOR-2145

**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 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 January 4, 2011.

II. PROGRAM PURPOSE:

The purpose of the **Supplemental Nutrition Assistance Program** (SNAP), formerly Food Stamp Program 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 EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

Melissa Barr, Repayment Investigator (RI), DHHR

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 the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in the SNAP.

V. APPLICABLE POLICY:

7 CFR § 273.16 USDA Code of Federal Regulations

Common Chapters Manual, Chapter 700

West Virginia Income Maintenance Manual, Chapters 1.2, 9.1, 10.3, 10.4 & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WVDHHR Benefit Recovery Referral, dated October 15, 2010
- D-2 7 CFR § 273.16 USDA Code of Federal Regulations
- D-3 West Virginia Income Maintenance Manual, Chapter 1.2
- D-4 Combined Application and Review Form (CAF) for dates – August 5, 2008, November 3, 2008, April 30, 2009, June 18, 2009 and November 20, 2009
- D-5 Rights and Responsibilities (DFA-RR-1) forms signed on the same dates as the CAF's – August 5, 2008, November 3, 2008, April 30, 2009, June 18, 2009 and November 20, 2009
- D-6 [REDACTED] County Family Court Order, Civil Action No: 08-D-----, entered by Family Court Judge, [REDACTED] on May 20, 2010
- D-7 Food Stamp Claim Determination, accompanied by monthly income calculations, for period September 2008 through February 2010
- D-8 West Virginia Income Maintenance Manual, Chapter 20.6
- D-9 Notification of Intent to Disqualify dated October 15, 2010
- D-10 West Virginia Income Maintenance Manual Chapter 20.2.F
- D-11 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 Repayment Investigator Melissa Barr on November 1, 2010. Ms. Barr contends that the Defendant has committed an Intentional Program Violation and is recommending that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program, hereinafter SNAP (formerly Food Stamp Program), for a period of one (1) year.
- 2) Notification of the January 4, 2011 hearing was mailed to the Defendant on November 23, 2010 via First Class U.S. Mail as the Defendant is a current recipient of benefits through the Department and resides at a confirmed address.

- 3) The hearing convened as scheduled on January 4, 2011 at 10:00 a.m., and as of 10:15 a.m., the Defendant failed to appear. 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 contends that the Defendant intentionally violated SNAP regulations by failing to report she was receiving \$300 per month in direct child support payments (unearned income) from the child's father. Exhibit D-6, Finding of Fact #14, confirms that the Defendant received \$300 in direct child support payments since the birth of the child in July 2008.
- 5) A review of the Combined Application and Review Forms (CAF's) submitted in Exhibit D-4 reveals that the Defendant failed to report she was receiving \$300 per month in direct child support payments on no fewer than five occasions - August 5, 2008, November 3, 2008, April 30, 2009, June 18, 2009 and November 20, 2009.
- 6) The Department submitted the Rights and Responsibilities forms completed and signed by the Defendant on the day of SNAP application/Review (August 5, 2008, November 3, 2008, April 30, 2009, June 18, 2009 and November 20, 2009). The Defendant marked "yes" to item #4 on all of the forms which state:

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 she provided was true and correct.

- 7) The Department submitted Exhibit D-7 which shows the monthly calculations for corrected SNAP benefit amounts with the unreported household income. The Food Stamp Claim Determination indicates that during the period September 2008 through February 2010, the Defendant's household received \$1,160 in SNAP benefits to which it was not legally entitled. Repayment was not pursued after February 2010 as Exhibit D-6 reduced the Defendant's child support amount to \$0 per month effective March 2010.
- 8) West Virginia Income Maintenance Manual, Chapter 10.4:
This section contains policy relating income disregards and deductions and to 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.

- 9) West Virginia Income Maintenance Manual, Chapter 10.3 confirms that unearned income (child support and/or direct child support payments) must be considered when determining SNAP eligibility and benefit amount.
- 10) 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.
- 11) West Virginia Income Maintenance Manual, Chapter 20.2:
When a AG (assistance 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.
- 12) 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)
- 13) Common Chapters Manual §740.11.D. 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.

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern SNAP benefits state that a Food Stamp 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 Food Stamp benefits.
- 2) The evidence reveals that the Defendant provided false and misleading information about her household income in order to receive SNAP benefits for which she was not legally entitled. This clearly establishes intent.
- 3) The evidence is clear and convincing that the Defendant intentionally committed a SNAP/Food Stamp Program violation as defined in the Food Stamp policy and regulations.

- 4) In accordance with SNAP policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first time offense is twelve months (one year).
- 5) Only the Defendant is subject to this disqualification. The 1-year disqualification will begin effective February 2011.

IX. DECISION:

Intentionally making a false or misleading statement or misrepresenting facts to secure SNAP benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Agency's proposal to apply a Food Stamp disqualification is **upheld**. The Disqualification period will begin effective February 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of January, 2011.

**Thomas E. Arnett
State Hearing Officer**