



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General**

Board of Review
P.O. Box 1736
Romney, WV 26757

**Earl Ray Tomblin
Governor**

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

January 19, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your Supplemental Nutrition Assistance Program Administrative Disqualification Hearing held January 13, 2011. The purpose of this hearing was to determine whether or not you intentionally committed an Intentional Program Violation.

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 is based on current policy and regulations. These regulations provide that 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).

The information which was submitted at your hearing revealed that you intentionally withheld information concerning your household income in order to receive benefits for which you were not entitled.

It is the decision of the State Hearing Officer to Uphold the proposal of the Department to implement a 24-month Intentional Program Violation.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Lori Woodward, RI

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

-----,

Defendant,

v.

Action Number: 10-BOR-2251

**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 a fair 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 fair hearing was convened on January 13, 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
Lori Woodward, Repayment Investigator

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation and should be disqualified for two years from participation in the Supplemental Nutrition Assistance Program or SNAP.

V. APPLICABLE POLICY:

Code of Federal Regulations, 7 CFR § 273.16
Common Chapters Manual, Chapter 700
West Virginia Income Maintenance Manual, Chapter 20.2; Chapter 9.1.A.2.h

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Computer printout of case comments from the Department's benefit issuance system dated September 8, 2009
- D-2 Combined Application and Review Form with associated Rights and Responsibilities dated September 8, 2009
- D-3 Notice of Decision dated September 17, 2009
- D-4 Computer printout of case comments from the Department's benefit issuance system dated March 15, 2010
- D-4a Notice of Decision dated March 16, 2010
- D-5 Information from Department of Veterans Affairs dated November 8, 2010
- D-6 Food Stamp Claim Determination
- D-7 Notification of Intent to Disqualify
- D-8 West Virginia Income Maintenance Manual Chapter 1.2, 1.4, 2.2, 9.1
- D-9 West Virginia Income Maintenance Manual Chapter 20.2, Common Chapters 740-740.11
- D-10 Computer printout of Electronic Disqualification Recipient System

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on November 29, 2010. The Department contends that the Defendant committed an Intentional Program Violation (IPV) and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a twenty-four (24) month period.
- 2) On October 28, 2010, the Department issued the Defendant Exhibit D-7, Notification of Intent to Disqualify, indicating that the Department had reason to believe that the Defendant intentionally violated a SNAP rule. This exhibit documents in pertinent part:

Based on the evidence developed through our investigation, the agency believes that ----- intentionally violated the food stamp program by not reporting his Veteran Benefit income.

Ms. Lori Woodward, Repayment Investigator presented Exhibit D-10, Computer printout from Food Nutrition Service, Electronic Disqualification Recipient System to demonstrate that the Defendant was previously disqualified from SNAP participation due to an IPV on May 1, 1997 and a second IPV would result in a twenty-four (24) month disqualification period.

- 3) Ms. Woodward testified that on September 8, 2009, the Defendant applied for SNAP assistance reporting a household composition of himself and his daughter. Exhibit D-2,

Combined Application and Review Form documents that during the application, the Defendant reported a household income of \$851.00, from the Defendant Social Security Administration income. Based on the information provided during the application, the Defendant's SNAP application was approved effective September 17, 2009 and the Department issued Exhibit D-3, Notice of Decision.

- 4) Ms. Woodward testified that on November 17, 2009 and March 15, 2010, the Defendant applied for the Low Income Energy Assistance Program (LIEAP). Exhibit D-4, Computer printout of case comments from the Department's benefit issuance system, documents that at the March 15, 2010 LIEAP application, the Defendant reported that his son, [REDACTED] moved into the household and his son's Social Security income was available to the household.
- 5) Ms. Woodward testified that information was received by the Department indicating that the Defendant started receiving \$123.00 a month in Veterans Affairs (VA) benefits beginning July 31, 2009. Ms. Woodward presented Exhibit D-5, Information from the Department of Veterans Affairs dated November 8, 2010 which lists the Defendant's receipt of VA benefits as:

7/31-123.00
9/1-123.00
10/1-123.00
10/30-123.00
12/1-123.00
12/31-123.00
2/1/10-75.47
3/1/10-121.07
4/1-123.00
4/30-123.00
6/1-123.00
7/1-123.00
7/30-123.00
9/1-123.00
10/1-123.00
11/1-123.00

Ms. Woodward noted that the income from July 31 through December 31 was for the year 2009, as the income listed for February was received in calendar year 2010 and income from July 31 through December 31 was received prior to the February 2010 income.

- 6) Ms. Woodward presented Exhibit D-6, Food Stamp Claim Determination to establish that by withholding information concerning the receipt of VA benefit compensation, the Defendant received an overpayment in SNAP benefits in the amount of \$358.00, for the time periods of September 2009 through June 2010.
- 7) The Defendant acknowledged that he received VA benefit compensation during the timeframe and believed that he reported the income information to the Department, but was uncertain of the exact month in which he reported such information. Additionally, the Defendant believed that the income information was available to the Department from the VA computer

system. Ms. Woodward testified that the Defendant reported his VA income to the Department after a Quality Control review of the Defendant's SNAP assistance in March 2010.

- 8) West Virginia Income Maintenance Manual Chapter 1.2 indicates:

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.

- 9) West Virginia Income Maintenance Manual, Chapter 9.1 indicates:

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) 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.

- 11) Common Chapters Manual 740.22.M states as follows:

Decision – 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, an Intentional Program Violation as defined in Section 740.11 of this Chapter. 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. If the Hearing Officer rules that the defendant committed an Intentional Program Violation, he or she will include the length and the beginning date of the disqualification penalty.

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern SNAP benefits dictate 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 regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 3) Evidence presented during the Administrative Disqualification Hearing is clear that the Defendant withheld information concerning the receipt of Veterans Affairs compensation on multiple occasions in order to receive SNAP benefits in which he was not entitled. The evidence is clear that the Defendant began receiving Veterans Affairs compensation in July 2009, two months prior to his application for SNAP benefits. The Defendant failed to report such income information at his September 2009 SNAP application and subsequent LIEAP applications dated November 2009 and March 2010.
- 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 second offense is twenty-four (24) months.
- 5) The Defendant is the only assistance group member subject to said disqualification penalty. The two year disqualification penalty will begin March 1, 2011 and will run concurrently for the next twenty-four (24) months.

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 Department's proposal to apply a twenty-four (24) month 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 January 2011.

Eric L. Phillips
State Hearing Officer