



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

March 10, 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 February 22, 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 Food Stamp Act, 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 failed to show that you intentionally reported inaccurate and misleading information about your household's composition in order to receive SNAP for which you were not entitled.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to apply a one (1) year SNAP disqualification penalty against you based on an Intentional Program Violation.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/Natasha Jemerison, Kanawha DHHR

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

-----,

Defendant

v.

Action Number: 10-BOR-2255

**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 February 22, 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
-----, Paralegal, Defendant's representative
-----, Defendant's witness
-----, Defendant's witness

Natasha Jemerison, State Repayment Investigator, Department Representative

It should be noted that one of the Defendant's witnesses, -----, participated in the hearing by telephone conference call.

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:

Movant's Exhibits:

- M-1 Benefit Recovery Referral Screen from Department's computer system
- M-2 WV Income Maintenance Manual §1.2.E
- M-3 Food Stamp Claim Determination forms and supporting documents
- M-4 Code of Federal Regulations 7 CFR 273.16
- M-5 Application form dated June 4, 2007
- M-6 Rights and Responsibilities form dated June 4, 2007 and supporting documents
- M-7 Application form dated June 8, 2007
- M-8 Rights and Responsibilities form dated June 8, 2007
- M-9 Various school documents and other records / Letter from Defendant dated November 13, 2006
- M-10 WV Income Maintenance Manual Section 2.2
- M-11 West Virginia Income Maintenance Manual §20.6
- M-12 Notification letters to Defendant dated October 13, 2010
- M-13 Written verification from witness dated November 13, 2007
- M-14 WV Income Maintenance Manual Section 8.2
- M-15 Personal Responsibility Contract dated June 8, 2007

Defendant's Exhibits:

- D-1 WV Income Maintenance Manual Section 1.2
- D-2 WV Income Maintenance Manual Section 2.2
- D-3 WV Income Maintenance Manual Section 20.2
- D-4 WV Income Maintenance Manual Section 20.6
- D-5 Code of Federal Regulations 7 CFR 273.16
- D-6 Case comments from Department's computer system dated June 2007 through

- October 2007
- D-7 Application form dated January 11, 2007
- D-8 Application form dated January 31, 2006
- D-9 Medical information from Mildred Mitchell Bateman Hospital dated August 2002

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing (ADH) was received by the Board of Review from the Department of Health and Human Resources (Department) on November 29, 2010. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and made a fraudulent statement or misrepresentation regarding her household composition in order to receive SNAP, and is recommending that she be disqualified from participation in SNAP for a period of one (1) year.
- 2) On or about October 13, 2010 the Department sent a Waiver of Administrative Disqualification Hearing (D-12) form to the Defendant, indicating that it believed she received SNAP by means of an intentional violation of a program rule. The letter alleges that the Defendant reported incorrect household composition information; specifically, that she added her daughter to her case while she [her daughter] was living in [REDACTED]
- 3) The Department presented written evidence to show that on June 4, 2007 the Defendant applied for SNAP (M-5), at which time she reported that her daughter lived in her household. She signed the application and rights and responsibilities forms (M-5, M-6) indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 4) Written evidence also shows (M-7) that the Defendant completed a WV WORKS cash assistance application on June 8, 2007, at which time she again reported that her child was living in her household. She signed the application and rights and responsibilities form (M-7, M-8) dated same indicating again that she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 5) Written evidence also shows (M-9) that the child has attended school in [REDACTED] from 2004 through the school year 2007. It is unclear as to the actual timeframe for school attendance in [REDACTED] during this period. Additional evidence (M-9) consists of a typed letter dated November 13, 2006 signed by the Defendant, in which she states that her daughter will be in the care of her grandparents through her high school years. The Defendant does not dispute this evidence, but claims that the letter she wrote (M-9) was drafted in order to allow the grandparents in [REDACTED] certain rights in regard to her daughter while she was living with them. She stated that circumstances changed in June 2007 when her daughter decided to begin living with her in West Virginia with the intention of possibly making the move permanent.
- 6) Evidence was presented (M-13) in the form of written information from the child's paternal grandmother in [REDACTED]. The document is compiled in question and answer format, with the grandmother's responses given in her own handwriting. She signed and dated the document on November 20, 2007. In it, she provided that the child lives with her, and that she has done so for five (5) years, beginning December 24th. The year listed is not legible. She also provided in the document that the child has been away from her home for a two (2) week period to West

Virginia. She also provided that the child spent overnight visits with the Defendant during the “end” of May 2007. Additional information provided in the document includes names and addresses of individuals who are able to verify the child’s living arrangements; however, those individuals were not available for testimony. The paternal grandmother was likewise unavailable for testimony.

- 7) Case comments (D-6) from the Department’s computer system show that on September 17, 2007, the Defendant contacted the Department inquiring about her child’s school clothing allowance voucher. According to the case comments, the Defendant reported that her purse had been stolen, and that she needed a replacement voucher. The Defendant testified that the child was still living with her in West Virginia on September 17, 2007 when she made the inquiry about the school clothing allowance voucher.
- 8) Case comments (D-6) dated September 20, 2007 provide that the worker received information that ██████ County, West Virginia schools did not have any information about the child being enrolled within the state. Case comments (D-6) dated October 4, 2007 show the Department took action on that date to remove the child from the Defendant’s SNAP benefits.
- 9) The Defendant contends that she did not commit an IPV. She provided that the child was with her from June 4, 2007 until approximately September 29, 2007, when she returned to ██████ to live. She stated she does not recall whether she reported when her child returned to ██████. The Department’s action to remove the child occurred within five (5) days of the date the Defendant claims the child returned to ██████.
- 10) The Defendant testified that, partly due to her various substance abuse and mental illness issues, her daughter normally resides in ██████ with her paternal grandparents. She stated that on or about June 4, 2007 her daughter came to West Virginia to live with her, and that at that time she applied for SNAP benefits for her. She added that, at the time, the child was uncertain as to whether she wanted to make the move a permanent one, and the decision was left up to the child. She added that her daughter eventually returned to ██████ to live with her grandparents. In addressing her understanding of her responsibilities and SNAP policy, she testified that she does not understand all the rules and regulations regarding SNAP. She added that for years she has been in and out of hospitals due to her mental health and substance abuse problems. She stated that she believed she was eligible for SNAP benefits for her daughter when she applied for them in June 2007. She added that she currently is residing in a residential psychiatric facility for homeless individuals, and she does not understand the allegations the Department has made against her.
- 11) Written evidence provided by the Defendant (D-7, D-8) shows that she applied for SNAP on January 31, 2006 and again on January 11, 2007, at which time she did not report that her child resided in her home. The Defendant testified that she only reported her child living with her when the child was physically living in her home, and offered this written evidence (D-7, D-8) to support her testimony in this regard.
- 12) Written evidence (D-9) from Mildred Mitchell Bateman Hospital, dated September 10, 2002, shows the Defendant was discharged from the hospital on that date with the following pertinent diagnoses: bipolar disorder, NOS with psychotic features, opiate dependence, personality disorder, NOS, and moderate psychosocial stressors.

- 13) The Defendant's witness, ----, is the Program Coordinator for the [REDACTED] the facility in which the Defendant resides. He testified that his facility is a safe haven for substance abuse and/or mentally ill individuals who are unable to function in other types of environments due to extreme circumstances. He testified that the Defendant is a "wreck" emotionally, and borderline suicidal. He added that, in his opinion, the Defendant's ability to make rational decisions is compromised due to her various issues.
- 14) The Defendant's other witness, ----, is her biological mother. She testified by telephone, and stated that she brought the Defendant's child from [REDACTED] to West Virginia during the last week of May 2007 to live with the Defendant. She corroborated the Defendant's testimony in this regard and added that at the time both she and the Defendant believed the child would be staying permanently. She testified that she accompanied the Defendant and the child to the Department of Health and Human Resources' office on June 4, 2007 when the Defendant applied for SNAP for the child. She added that both she and the Defendant took the child shopping for clothes that same day because they believed she would be staying permanently. She added that she transported the child back to [REDACTED] on or about either August or September 29, 2007 after it was determined that the child would return there to live. She stated that she cannot recall the exact date.
- 15) The Department argued that the written evidence from the child's paternal grandmother (M-13) shows that the child was only in West Virginia for a two week period beginning in May 2007, and that because the child was only visiting, she was not eligible to be included in the SNAP benefits of the Defendant. The Defendant stated that she was unaware of this particular policy, and reiterated that she believed the arrangement to be a permanent one when she applied for SNAP for her child.
- 16) West Virginia Income Maintenance Manual §8.2 states in pertinent part:

RESIDENCE

To be eligible to receive benefits, the client must meet the eligibility requirement of residence.

The client must live within the borders of West Virginia. Intent to remain permanently in West Virginia is not a requirement, although the client must reside in the State for purposes other than vacation. A time limit cannot be set for how long the client must live in West Virginia. The client cannot be required to maintain a permanent or fixed dwelling.

- 18) 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.
- 19) 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 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.

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.

- 20) Common Chapters Manual 700, Appendix A, Section B, provides that an 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 relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp benefits.
- 21) Common Chapters Manual 700, Appendix A, Section G, states that the State Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an Intentional Program Violation as defined in Section B of this Appendix.
- 22) The Defendant signed numerous Rights and Responsibilities forms (D-6) thereby acknowledging the following pertinent responsibilities:

4) 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 SNAP benefits as follows: First Offense – one year; Second Offense – two years; Third Offense – permanently.

48) I also understand that if I give incorrect or false information or if I fail to report changes that I am required to report, I may be required to repay any benefits I receive and I may also be prosecuted for fraud. I also understand that any person who obtains or attempts to obtain benefits from DHHR by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device can be charged with fraud.

49) I certify that all statements on this form have been read by me or read to me and that I understand them. I certify that all the information I have given is true and correct and I accept these responsibilities.

- 23) 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 Intentional Program Violation.
- 3) The Defendant clearly was aware of her responsibility to report accurate information and the penalties involved for failure to do so. She signed numerous applications and rights and responsibilities forms during the period in question which supports that she was knowledgeable of those rights and responsibilities. These forms clearly informed her that giving incorrect or false information may be considered fraud, and the penalties involved for providing false information.
- 4) Policy provides that in order to meet the eligibility requirement of residency, an individual must live within the borders of the state. The intent to reside permanently is not a requirement; however, the individual must be residing in the state for purposes other than vacation. A time limit cannot be set for how long the individual must live within the state.
- 5) The question for this hearing is whether the Defendant intentionally reported false or misleading information when she applied for SNAP benefits for her child on June 4, 2007, and reported that her child lived with her.
- 6) The totality of the evidence supports that the Defendant's daughter was physically living with her in West Virginia at the time of the June 4, 2007 SNAP application, as she reported. Additionally, the evidence supports that the Defendant believed that the child's move to West Virginia would potentially be a permanent one. Both the Defendant and her mother testified to the timeframe the child was living with her in West Virginia, as well as to their belief that the child would be residing permanently with her in West Virginia. The evidence regarding the child's school attendance in [REDACTED] does not speak to the period of time in question, and the written documentation provided by the paternal grandmother is not specific enough; it is also given less weight because the author was not available for cross examination.
- 7) Therefore, the Department has not shown that the Defendant committed an Intentional Program Violation by intentionally reporting inaccurate and misleading information about her household composition.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **reversed**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of March, 2011.

**Cheryl Henson
State Hearing Officer**