



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

February 14, 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 January 26, 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, the 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 showed that you intentionally provided false 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 **uphold** the Agency's proposal to apply a one (1) year SNAP disqualification penalty against you based on an Intentional Program Violation. Your penalty begins April 1, 2011.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/Jennifer Butcher, Kanawha DHHR

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

-----,

Defendant

v.

Action Number: 10-BOR-2339

**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 January 26, 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:

Jennifer Butcher, State Repayment Investigator, Department Representative
Tammy Drumheller, Department witness

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:

Department's Exhibits:

- D-1 Benefit Recovery Referral Screen from RAPIDS computer system dated January 17, 2011
- D-2 West Virginia Income Maintenance Manual §1.2.E
- D-3 Code of Federal Regulations §7 CFR 273.16
- D-4 Application form dated November 2, 2009 and supporting documents
- D-5 Medicaid application form dated January 6, 2010 and supporting documents
- D-6 SNAP review form dated March 22, 2010 and supporting documents
- D-7 Comments from Department's computer system dated June 16, 2010
- D-8 Medicaid application form dated June 8, 2010
- D-9 Comments from Department's computer system dated June 23, 2010 and July 26, 2010 and other computer printout screens from Department's computer system
- D-10 Comments from Department's computer system ranging from July 2010 through October 2010
- D-11 Two (2) sworn written statements dated July 15, 2010
- D-12 Employer verification from [REDACTED] Company
- D-13 Computer screen printouts regarding vehicle registration and driver's license information from Department of Motor Vehicles data system
- D-14 West Virginia Income Maintenance Manual Section 2.2.B
- D-15 West Virginia Income Maintenance Manual Section 2.2.B.1
- D-16 West Virginia Income Maintenance Manual Section 2.2.B.4
- D-17 Food Stamp Claim Determination forms and supporting documentation
- D-18 West Virginia Income Maintenance Manual Section 20.6.A
- D-19 Notification letters dated November 10, 2010
- D-20 West Virginia Income Maintenance Manual Section 20.2.C.2
- D-21 West Virginia Income Maintenance Manual Section 20.2.E.3
- D-22 West Virginia Income Maintenance Manual Section 20.2.F.2.a

Claimant's Exhibits:

None

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 December 3, 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) Notification of the January 26, 2011 hearing was mailed to the Defendant on or about December 20, 2010 via first class mail delivery, as the Defendant is a current recipient of benefits through the Department and resides at an address known to be good by the Department.
- 3) The hearing was convened as scheduled at 1:00 p.m. and as of 1:23 p.m. the Defendant failed to appear or notify the Board of Review of any conflict preventing her from appearing. 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) On or about November 10, 2010 the Department sent the Defendant a Notification of Intent to Disqualify (D-19) form, indicating that the Department had reason to believe she intentionally violated a SNAP rule. The form also included the following:

Based on the evidence developed through our investigation, the agency believes that ----- intentionally violated the food stamp program by: failing to report husband -----in the home at the 11/2/09 SNAP application. The evidence to prove this allegation consists of DMV, Employment, Driver License, and Child Support.

- 5) The Department presented evidence to show that the Defendant completed numerous applications for SNAP and Medicaid (D-4, D-5, D-6, and D-8) from November 9, 2009 through June 14, 2010, at which time she did not report that her husband, -----, was living in her household. She also signed Rights and Responsibilities forms (D-4, D-5, and D-8) indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 6) Additional evidence submitted (D-7) in the form of case comments from the Department's computer system dated June 16, 2010 provide that a case worker for the Department documented that Women's and Children's Hospital verified the birth of -----on June 4, 2010 and listed the father as -----. The child was added to the Defendant's case for Medicaid coverage.

- 7) The Department's witness, Tammy Drumheller, works for the Department as a Front-End Fraud Investigator. She testified that she conducted an investigation into the Defendant's household composition, and that during said investigation she interviewed two individuals who live in the same community as the Defendant. She stated that she obtained two (2) sworn written statements (D-11) from the individuals, in which they both described that a "couple" lived at the Defendant's address with a child. One of the witness statements added that he knew that the man worked for a satellite company.
- 8) Ms. Drumheller also testified that she obtained written verification from the West Virginia Department of Motor Vehicles that provides (D-13) that -----utilizes the Defendant's mailing address as his own for vehicle title purposes and for his driver's license. She added that the driver's license verification shows that he renewed his license on April 23, 2010 indicating his address as the Defendant's. She added that the Department's child support data system shows that -----lives at the Defendant's address as well. She testified that she also obtained written verification from [REDACTED] employer (D-12) which shows that his home address listed with the company matches the Defendant's. This employment verification also shows -----has been employed with the company since October 2005, and receives regular pay from that company every two (2) weeks.
- 9) Ms. Drumheller also testified that she verified that -----had an active case with the Department for benefits, and that from July 23, 2009 through January 17, 2011 he indicated (D-9) that he lived at [REDACTED] West Virginia. She stated that one of the witnesses from the Defendant's community who supplied her with a witness statement (D-11) told her on July 15, 2010 that he (the witness) lived at that address, and that his father owns the home. The witness provided in his statement (D-11) that he has lived in that home since February 2010, and that prior to that a woman lived in the home.
- 10) The Department's representative, Jennifer Butcher, a SNAP Repayment Investigator, testified that she reviewed the Defendant's case file and determined that she has received benefits since 2001 "off and on" and that several applications as well as rights and responsibilities forms have been read and signed by her, indicating her understanding of her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 11) 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.
- 12) 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.

- 13) 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.
- 14) 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.
- 15) The Defendant signed numerous Rights and Responsibilities forms 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.

- 16) 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 truthful and accurate information and the penalties involved for failing to do so. She read and signed numerous Rights and Responsibilities forms during the period in question which clearly inform her of these responsibilities.
- 4) The evidence is also clear in that the Defendant intentionally reported false information about her household composition in order to receive SNAP. The totality of the evidence supports that -----lived with the Defendant during a time period when she reported that he did not.
- 5) The Department was correct in its determination that the Defendant has committed an Intentional Program Violation by intentionally reporting false information about her household composition.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**. The penalty will begin April 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of February, 2011.

**Cheryl Henson
State Hearing Officer**