



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 16, 2011

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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 March 15, 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 showed that you intentionally provided false information about your household's circumstances in order to receive SNAP benefits 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 May 1, 2011.

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-2368**

**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 March 15, 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:**

Natasha Jemerison, 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 Department's computer system dated October 8, 2010
- D-2 WV Income Maintenance Manual §1.2.E
- D-3 Food Stamp Claim Determination forms and supporting documents
- D-4 Code of Federal Regulations §7 CFR 273.16
- D-5 Application signed by Defendant November 13, 2006
- D-6 Rights and Responsibilities form signed by Defendant November 13, 2006
- D-7 Application signed by Defendant May 15, 2007
- D-8 Rights and Responsibilities form signed by Defendant May 15, 2007
- D-9 Application for Defendant dated May 21, 2008, not signed by Defendant
- D-10 Rights and Responsibilities form signed by Defendant May 21, 2008
- D-11 Various pieces of evidence speaking to employment and household composition
- D-12 WV Income Maintenance Manual Section 20.6
- D-13 Notification letters dated October 26, 2010

**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 7, 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 and income 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 March 15, 2011 hearing was mailed to the Defendant on or about February 8, 2011 via registered restricted mail delivery, as the Defendant is not a current recipient of benefits through the Department and does not reside at an address also known to be good by the Department. The Defendant signed for the notice on February 28, 2011.
- 3) The hearing was convened as scheduled at 1:00 p.m. and as of 1:21 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 October 26, 2010 the Department sent the Defendant a Notification of Intent to Disqualify (D-13) form, indicating that it 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 [sic] by: not reporting correct household composition and income. The evidence to prove this allegation consists of applications, income verification, marriage verification, statements.

- 5) The Department presented evidence (D-5, D-7 and D-9) to show that the Defendant completed SNAP application interviews on November 13, 2006, May 15, 2007, and May 21, 2008 and that at each interview she did not report that -----lived in her household, and that he had both earned and unearned income during the period. She also did not report that she was married to -----on January 18, 2006. She reported at each interview that -----and -----lived in her household. She signed Rights and Responsibilities forms (D-6, D-8 and D-10) during these periods indicating that she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 6) Additional evidence (D-11) from the Kanawha County, West Virginia Division of Vital Statistics shows that the Defendant married ----- on January 18, 2006 in Charleston, West Virginia.
- 7) Further evidence (D-11) shows that -----was employed with [REDACTED] Incorporated, from October 25, 2006 through January 22, 2007. The employer verified that ---- -listed himself as being married with six (6) dependents, and received pay from November 3, 2006 through January 26, 2007.
- 8) Additional evidence (D-11) shows that the Family Court of [REDACTED] County, West Virginia issued an order on November 9, 2006 appointing -----as the guardian for -----, and further ordering that the Defendant will receive no parental time with the child.
- 9) Additional evidence (D-11) from [REDACTED] provides that -----was employed by the company from February 19, 2007 through April 8, 2008. This document also lists the various pay checks he received during the period.

- 10) Additional evidence (D-11) from -----provides that -----was employed with his company from June 25, 2008 through at least August 26, 2008. He is listed as being married with three (3) dependents while employed with this company, and a list of all pay checks issued to him while employed is provided.
- 11) Additional evidence (D-11) from -----provides that both -----and ----- rented an apartment from her from February 1, 2008 through at least August 28, 2008. This evidence includes a list of occupants, which includes -----, ----- and one child, male, three (3) to four (4) years of age. ----- indicated that another male child “might” visit them.
- 12) The Department presented evidence in the form of two (2) sworn written statements from neighbors (D-11) in which one neighbor is purported to report that she has lived near the Defendant and -----for two (2) years and has been friends with them for three (3) years. The statement is dated August 26, 2008. Her written statement also provides that she knows the Defendant is married to -----and that he is employed. The second written statement is dated April 23, 2009 from -----, and in it she is purported to report that “-----” has lived with her since he was eight (8) or nine (9) years of age. The statement also provides that the Defendant sees the child about once a month. The individuals who provided the written statements were not available for testimony.
- 13) Additional evidence (D-11) in the form of a “Client Contact Report” from the Department shows that numerous comments were entered into the Department’s computer system during April 2008 indicating that -----was living with his great grandparents, ----- and ----- . These comments also provide that a secretary at -----’s school reported that ----- lives with her father. This document also shows that the Defendant mentioned “her husband” in a conversation with a Department worker on April 7, 2008.
- 14) 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.
- 15) 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.
- 16) 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.

17) 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.

18) 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.

19) 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:

- 1<sup>st</sup> Offense: 1 year
- 2<sup>nd</sup> Offense: 2 years
- 3<sup>rd</sup> Offense: Permanent

### **VIII. CONCLUSIONS OF LAW:**

1) The policy and regulations that govern SNAP provide 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 applications and 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 and income in order to receive SNAP benefits. She did not report that she married ----- on January 18, 2006 and that they lived together, despite having completed numerous application interviews after the marriage. The evidence clearly shows that she was both married to and living with -----at times when she clearly reported otherwise. She also did not report any of his income from employment or unemployment compensation. She also at times reported that her children lived in her household when the evidence indicates that they lived elsewhere.
- 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 income.

**IX. DECISION:**

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

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 14<sup>th</sup> Day of February, 2011.**

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**Cheryl Henson  
State Hearing Officer**