



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 February 2, 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 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 **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 March 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-2387

**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 2, 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

Natasha Jemerison, State Repayment Investigator, Department Representative

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:

- D-1 Benefit Recovery Referral Screen from Department's computer system
- 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 form dated July 21, 2009
- D-6 Rights and Responsibilities form dated July 21, 2009
- D-7 Application form dated December 2, 2009
- D-8 Case comments and other correspondence from Department's records
- D-9 Application form dated June 2, 2010
- D-10 Various court documents and case comments from Department's records
- D-11 West Virginia Income Maintenance Manual §2.2
- D-12 West Virginia Income Maintenance Manual §20.6
- D-13 Notification letters to Defendant dated October 8, 2010 and policy

Defendant'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 8, 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 8, 2010 the Department sent a Waiver of Administrative Disqualification Hearing (D-13) form to the Defendant, indicating that it believed that she received SNAP by means of an intentional violation of a program rule. The letters allege that the Defendant

reported incorrect household composition information; specifically, that her children, [REDACTED] -----, and -----, lived in her household when their father actually had custody of them.

- 3) The Department presented evidence to show that the Defendant completed an application (D-5) for SNAP on July 21, 2009 at which time she reported that her children, [REDACTED] -----, and --- --, lived in her household. She signed the application indicating the she understood her responsibility to provide complete and truthful information, and that she understood that it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits to which she is not entitled. The children were included in the Defendant's SNAP benefits as a result of this reported information.
- 4) Additional evidence (D-6) shows the Defendant signed the Rights and Responsibilities form on July 21, 2009, again acknowledging her understanding of her responsibilities and the penalties for failure to report accurate and truthful information.
- 5) Additional evidence (D-7) shows the Defendant completed an application review interview for SNAP on December 2, 2009, at which time she again reported that [REDACTED] -----, and -----, lived in her household. She again received SNAP benefits for the children as a result of this reported information
- 6) Additional evidence (D-8) shows that the Department's Bureau for Child Support Enforcement Unit provided information to the SNAP case worker on June 2, 2010 that indicated the children, [REDACTED] -----, and -----, were living with their father. Additional documentation (D-8) provides that a temporary court order dated May 12, 2010 granted the father custody.
- 7) Additional evidence (D-9) shows that the Defendant completed a SNAP application review interview on June 2, 2010, at which time she again reported that [REDACTED] -----, and -----, lived in her household. She again requested and was granted SNAP benefits for those children. This evidence also shows that on June 18, 2010 a case worker for the Department contacted the children's father by telephone. The case worker recorded in her case comments record that the children's father told her all three of the children have lived with him for two years and that the Defendant did not even have visitation rights for the first year. He acknowledged, according to the documented conversation, that the Defendant has had visitation with the children for the past year and sees them on Mondays and Fridays from 3:30 p.m. until 8:30 p.m., and every other Saturday from 10:00 a.m. until 7:00 p.m.
- 8) The Defendant testified that the children were "with" their father, and she corroborated the father's alleged statements regarding the visitation schedule. She added that she occasionally keeps the children at other times as well. She added that although the children usually do not stay the night with her, occasionally they do. She acknowledged that occasionally the children stay with their father at times when she is supposed to be having visitation with them. She stated that she did not know she was doing anything wrong by reporting the children lived with her, and thought that because the children visited her regularly that it was acceptable to report that they lived with her.
- 9) Additional evidence (D-10) from the Family Court of [REDACTED] County, West Virginia, provides that a court order was issued July 15, 2010 which provides that the children's father will have primary custody of the children. This court order corroborates the Defendant and the father's testimony regarding Defendant's visitation schedule. Another court order dated June 1,

2010 supports that the father has custody of the children. Additionally, this evidence (D-10) contains case comment records from the Department's Child Support Enforcement Unit which document that on January 15, 2009, the father reported to that unit that he had custody of the children, and that he provided them with a copy of a court order supporting his claim.

- 10) 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.

- 11) 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.

- 12) 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.
- 13) 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.
- 14) 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.

15) 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) The totality of the evidence supports that the Defendant intentionally provided inaccurate and misleading information about her household composition on numerous occasions in order to receive SNAP. She reported on numerous occasions that her children, [REDACTED] and ---, lived in her household when they did not. The evidence is clear in that the children only visited the Defendant on a fairly regular basis for several hours three (3) days per week, with occasional deviations from that schedule. The Defendant misled the Department by reporting that the children lived in her home.
- 5) The Department was correct in its determination that the Defendant has 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 **upheld**. The penalty will begin March 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**