



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

April 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 April 5, 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 did not show that you intentionally provided false information about your household's circumstances 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/Jennifer Butcher, Kanawha DHHR

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

-----,

Defendant

v.

Action Number: 10-BOR-2478

**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 April 5, 2011. It should be noted that this hearing was previously scheduled to be held on March 1, 2011, but was continued at the Department's request to allow time for obtaining evidence.

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

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 Email correspondence dated July 27, 2010
- D-2 West Virginia Income Maintenance Manual §1.2.E
- D-3 Code of Federal Regulations §7 CFR273.16
- D-4 SNAP application dated July 7, 2008
- D-5 Rights and Responsibilities form signed July 7, 2008
- D-6 SNAP application dated December 2, 2008 including Rights and Responsibilities form signed December 2, 2008
- D-7 SNAP application dated July 7, 2009 including Rights and Responsibilities form signed July 7, 2009
- D-8 Program Disqualification Screen from Department's computer system including case comments dated May 4, 2010
- D-9 West Virginia Income Maintenance Manual Section 9.1
- D-10 West Virginia Income Maintenance Manual Section 2.2.B
- D-11 West Virginia Income Maintenance Manual Section 2.2
- D-12 Food Stamp Claim Determination forms and supporting documentation
- D-13 West Virginia Income Maintenance Manual Section 20.6.A
- D-14 Notification letters dated July 28, 2010
- D-15 West Virginia Income Maintenance Manual Section 20.2.C.2
- D-16 West Virginia Income Maintenance Manual Section 20.2.E
- D-17 West Virginia Income Maintenance Manual Section 20.2.2 (a)
- D-18 Court documents from the State of North Carolina regarding guilty pleas

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 30, 2010. The Department contends that the Defendant has committed an Intentional Program

Violation (IPV) and made a fraudulent statement or misrepresentation regarding her household circumstances 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 April 5, 2011 hearing was mailed to the Defendant on or about March 1, 2011 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 10:00 a.m., and as of 10:26 a.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 July 28, 2010 the Department sent the Defendant a Notification of Intent to Disqualify (D-14) 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 [SNAP] by: failing to report that -----was a convicted drug felon as of April 3, 2008.

- 5) The Department presented evidence to show that the Defendant completed numerous SNAP applications and/or Rights and Responsibilities forms (D-4, D-5, D-6, and D-7) from July 7, 2008 through July 7, 2009 at which times she reported that her daughter, -----, lived in her household. She also reported that no one in her household had been convicted of a drug felony for possession, use or distribution of a controlled substance on or after August 23, 1996. The application forms she signed specifically ask the question “Has anyone in your household been convicted of a drug felony for possession, use or distribution of a controlled substance on or after August 23, 1996?” The Defendant answered “no” on each occasion. She signed the application indicating she understood her responsibility to report accurate and truthful information. She also signed the Rights and Responsibilities forms indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 6) Additional evidence submitted (D-18) in the form of documents from the State of [REDACTED] Superior Court Division, shows that the Defendant’s daughter pled guilty to “attempted trafficking MDMA by possession” and “attempted trafficking MDMA by transport” on September 16, 2008. The documents provide that both offenses were perpetrated on April 2, 2008, and that both are felony offenses.
- 7) Additional evidence submitted (D-12) shows that the Defendant’s daughter was added to her SNAP benefits effective May 2008. There is no evidence to support that the Defendant was aware of her daughter’s April 2, 2008 felony offenses in [REDACTED] or the fact that she signed the plea deal in September 2008.
- 8) 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.

9) West Virginia Income Maintenance Manual § 20.2 (C) (2) states in pertinent part:

IPV's include making a 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.

10) 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.

11) 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.

12) 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.

13) 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 both the application and Rights and Responsibilities forms during the numerous application interviews completed during the period in question, which clearly informed her of these responsibilities.
- 4) The evidence is also clear in that the Defendant's daughter, at age nineteen (19), pled guilty on September 16, 2008 in a [REDACTED] court to two felony drug offenses that occurred on April 2, 2008. The evidence also shows that the Defendant's daughter was added to her SNAP benefits effective May 2008.
- 5) The evidence does not clearly show, however, that the Defendant was aware of her daughter's felony drug convictions when, during the period in question, she informed the Department that no one in her household had committed such offenses.
- 6) Therefore, based on the evidence submitted, the Department has not shown, by clear and convincing evidence, that the Defendant committed an Intentional Program Violation by intentionally reporting false information about her household circumstances.

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 14th Day of April, 2011.

**Cheryl Henson
State Hearing Officer**