



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 8, 2011

RE: ----- Administrative Disqualification Hearing (ADH)

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, 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 shows that you intentionally reported inaccurate and misleading information about your household's income 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 will begin 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: 11-BOR-372

**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.

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

-----, Defendant's representative

-----, Defendant's witness

Natasha Jemerison, Department representative

Tammy Drumheller, Department's witness

Alan Rueda, Department's 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:

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 March 25, 2008 and supporting documents
- M-6 Rights and Responsibilities forms dated March 25, 2008
- M-7 Application form dated September 23, 2008 and supporting documents
- M-8 Rights and Responsibilities forms dated September 23, 2008
- M-9 Low Income Energy Assistance Program (LIEAP) application dated February 23, 2009 and supporting documents
- M-10 Application form dated April 13, 2009 and supporting documents
- M-11 Rights and Responsibilities forms dated April 13, 2009
- M-12 Income verification from The Work Number dated January 3, 2011
- M-13 WV Income Maintenance Manual §2.2
- M-14 WV Income Maintenance Manual Section 20.6
- M-15 Notification letters dated January 3, 2011
- M-16 Notification letters dated April 25, 2008, October 24, 2008, February 24, 2009, And April 17, 2009

Defendant's Exhibits:

- D-1 Various case comments from Department's computer system
- D-2 Application dated March 25, 2008 and supporting documents
- D-3 Low Income Energy Assistance Program (LIEAP) application dated November 7, 2007
- D-4 Application dated September 23, 2008 and supporting documents
- D-5 Application dated April 13, 2009 and supporting documents

- D-6 Low Income Energy Assistance Program (LIEAP) application - undated
- D-7 Application dated September 1, 2009 and supporting documents
- D-8 Not provided
- D-9 Income verification from [REDACTED]
- D-10 [REDACTED] verification of earnings for Claimant's wife
- D-11 Earnings verification from [REDACTED]
- D-12 Low Income Energy Assistance Program (LIEAP) application dated October 19, 2009

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 January 19, 2011. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and made a fraudulent statement or misrepresentation regarding his household composition in order to receive SNAP, and is recommending that he be disqualified from participation in SNAP for a period of one (1) year.
- 2) On or about January 3, 2011, the Department sent a Waiver of Administrative Disqualification Hearing (M-15) form to the Defendant, indicating that it believed he received SNAP by means of an intentional violation of a program rule. The letter alleges that the Defendant reported incorrect household income information; specifically, that he did not report his wife's earned income from [REDACTED]
- 3) The Department presented written evidence to show that on March 25, 2008 the Defendant applied for SNAP (M-5), at which time he reported that his wife, -----, lived in his household, and reported income for her from [REDACTED]. He did not report any income for her from [REDACTED]. He signed the Rights and Responsibilities form (M-6) on that same date, indicating he understood his responsibility to report accurate and truthful information and the penalties for failure to do so. The application shows that [REDACTED] continues to be listed on the employment screens, but zero hours and zero income is listed for this employer. Also, insurance information is listed which shows [REDACTED] as the providing employer. The case comments entered by the case worker (D-1) on March 25, 2008 are thorough, and show no indication of the Defendant reporting any income from [REDACTED]
- 4) There is some indication that the Department questioned whether the Defendant's wife was working at both [REDACTED] and [REDACTED]. Case comments in the Department's computer system (D-1) show that on April 24, 2008 the case worker attempted to send a letter to the Defendant to verify loss of employment from [REDACTED] since no income was being reported from there; however, it does not appear that this was followed up on as the "system" would not computer generate a letter requesting this information. The Department then entered the end date for [REDACTED] employment as April 24, 2008. The Defendant's next application form (M-7) clearly shows this end date listed. There is no case recording to explain why the Department entered this date or whether the loss of employment was reported or verified.
- 5) The Department's written evidence also shows (M-7) that the Defendant completed a SNAP review application on September 23, 2008, at which time he again reported that his wife lived in his household, but he did not report her income from [REDACTED]. He signed the application and Rights and Responsibilities form (M-8) indicating he understood his responsibility to report

accurate and truthful information and the penalties for failure to do so. Case comments for this date (D-1) are thorough, and show that the Defendant reported that his wife was currently taking an [REDACTED] "course" and that she will begin working on or around October 30, 2008. There is no indication from these case comments that the Defendant reported any [REDACTED] income for her.

- 6) Additional written evidence from the Department (M-9) provides that the Defendant applied for the Emergency Low Income Energy Assistance Program (LIEAP) on February 23, 2009, at which time he reported that his wife lived in his household; however, he again did not report her income from [REDACTED]. This particular application is a self-completed application form, and shows the Defendant entered "N/A" in the section marked "Source or Name of Employer" for his wife's income information. He signed the application indicating he understood his responsibility to report accurate and truthful information and the penalties for failure to do so. The Defendant was asked to explain, during the hearing, why he entered "N/A" in the section provided to describe income sources for his wife, and he stated that he usually does not enter that information on forms because he is afraid of entering something incorrectly and usually waits for the case worker to enter that information for him once he is interviewed. He acknowledged that he wrote "N/A" on the form in his own handwriting. Case comments (D-1) from the Department's computer system show that he reported that he is unemployed. There is no mention that he reported any income for his wife from [REDACTED]. Alan Rueda, an employee with the Department of Health and Human Resources' office in [REDACTED] West Virginia, testified that he interviewed the Defendant for the purposes of this particular application (M-9), and he stated that he would never have instructed someone to enter "N/A" in a field on the application if there were income to be reported.
- 7) Additional written evidence from the Department (M-10) provides that the Defendant applied for SNAP on April 13, 2009, at which time he again reported that his wife lived in his household, and again did not report her income from [REDACTED]. He signed the Rights and Responsibilities form (M-11) on that same date indicating he understood his responsibility to report accurate and truthful information and the penalties for failure to do so. Case comments from the Department's computer system (D-1) for April 13, 2009 show that the worker recorded that "no earned or unearned income" was reported at that time.
- 8) The Department verified the Defendant's wife's income from [REDACTED] by utilizing the online employment and income verification service entitled "The Work Number." This verification (M-12) shows that the Defendant's wife has worked for [REDACTED] without interruption since March 24, 2004 and lists her total "time with employer" as six (6) years and nine (9) months. This verification shows that she earned a total of twenty thousand, one hundred sixty-two dollars and sixteen cents (\$20,162.16) during the year of 2008, and twenty-one thousand, two hundred ninety-five dollars and five cents (\$21,295.05) during 2009.
- 9) The verification of earnings for the Defendant's wife (M-12) shows that she received paychecks from [REDACTED] during months when the Defendant was interviewed by the Department and did not report those earnings as having been received; specifically, March 2008, September 2008, February 2009, and April 2009.
- 10) The evidence shows (M-12) the Defendant's wife received paychecks showing a total gross income of one thousand seven hundred nineteen dollars and sixty cents (\$1719.60) in March 2008; one thousand nine hundred fifty-one dollars and eighty-five cents (\$1951.85) in

September 2008; one thousand four hundred ninety-four dollars and twenty cents (\$1494.20) in February 2009; and two thousand four hundred two dollars and seventy-three cents (\$2402.73) during April 2009.

- 11) The Department contends that the Defendant intentionally did not report his wife's earnings from [REDACTED] on several occasions, and that he did so willfully in order to receive SNAP. Natasha Jemerison is a State Repayment Investigator in the [REDACTED] County, West Virginia Department of Health and Human Resources' office in [REDACTED] West Virginia. She testified that the Defendant has received benefits from the Department "on and off" since September 2001, having signed numerous applications and rights and responsibilities forms during that timeframe, which she claims shows that he is well informed in the reporting process and its requirements.
- 12) The Department offered as evidence several notification letters (M-16) dated April 25, 2008, October 24, 2008, February 24, 2009, and April 17, 2009, which were mailed to the Defendant after each application interview and informed him of the total amount of gross earned income being counted in determining his SNAP eligibility. Ms. Jemerison asserts that the Defendant knew that all his household earned income was not being considered and withheld that fact from the Department. She stated that during the month of October 2007 the Defendant's SNAP benefits increased from one hundred twelve dollars (\$112.00) to five hundred forty-two dollars (\$542.00) in value, and contends that the Defendant did not alert the Department of the other income. The Defendant's objection to the exhibit being entered as evidence, based on the fact that Defendant was not provided the exhibit prior to the hearing, is noted, but the evidence is allowed. The Defendant testified that he does not always get those letters and when he does receive them he does not pay much attention to them. In addressing the significant change in SNAP amount, he stated that "they usually tell me right then and there what I get" after the SNAP interview, and added that he usually cannot remember the prior amount he received in order to compare the changes. He stated that his wife usually keeps the "card" and she buys the food.
- 13) The Defendant testified that he has been in the military "on and off" for about fifteen (15) years, and that during his military experience, he had several injuries and was "knocked out" several times. As a result, he stated that he has been diagnosed with Traumatic Brain Injury (TBI) and Post Traumatic Stress Disorder (PTSD), and that these conditions affects his memory, judgment, and moods; however, he claims that he is fully capable of completing the application and review interviews with the Department by himself, and that he did not withhold information about his wife's income from [REDACTED] at any time. He added that he never reported that his wife stopped working there. He stated that he may sometimes forget to bring her pay stubs with him for the interviews, but always makes sure they are dropped off afterwards if they are forgotten.
- 14) The Defendant's wife, ----, testified that she has been employed with [REDACTED] for seven (7) years, and has also worked at [REDACTED]. She stated that she never stopped working at [REDACTED]. She stated that when her child was born in August 2007 she took a little time off work, but that her pay continued due to her having accumulated vacation and sick days to cover most of her time off. She stated that she may have been reduced pay during that short timeframe, but that she has worked consistently the rest of the timeframe. She stated that she does not attend review and application interviews with her husband because she is usually working. She stated that she provided her pay stubs to her husband prior to each interview with the Department, and

at times when he forgets them, she has “dropped them off in the box” in the Department’s lobby. She stated that she did notice an increase in their SNAP amount after her child was born.

- 15) The Defendant contends that he did not commit an IPV. He added that he has been receiving assistance for ten (10) years from the Department without having an overpayment issue, which he claims shows that he has a pattern of reporting his circumstances accurately. He added that he consistently reported the insurance information purchased from his wife’s employer, [REDACTED] which he claims shows that he was not trying to withhold information from the Department.
- 16) The Defendant provided additional evidence in the form of a regular Low Income Energy Assistance Program (LIEAP) application (D-3), which is a self-completed form, dated November 7, 2007, in which he clearly reported income for his wife from [REDACTED]
- 17) The Defendant submitted additional evidence (D-4) in form of a SNAP application, dated September 23, 2008, which shows that the [REDACTED] employment was ended on April 24, 2008, and also documents that the Defendant’s wife was found to have left the job for “comparable employment” and that “good cause” was found for leaving that employment. The Defendant signed the application indicating all information provided was accurate and truthful.
- 18) Case comments from the Department’s computer system (D-1) dated June 25, 2009, show that a case worker documented that an investigation had determined that the Defendant’s wife had been working at [REDACTED] since March 24, 2004 and that the income had not been reported during the past several reviews. The income was entered on that date and began being considered in determining SNAP eligibility.
- 19) Additional evidence submitted by the Defendant (D-7) in the form of an application dated September 1, 2009, shows that the Defendant reported that his wife is working at [REDACTED] This was after the date of the Department’s June 2009 investigation findings which had already determined that the Defendant’s wife was employed at [REDACTED]
- 20) Additional evidence (D-12) in the form of a regular Low Income Energy Assistance Program (LIEAP) application dated October 19, 2009, shows the Defendant reported his wife’s income from [REDACTED] Again, this application was submitted after the Department became aware of the [REDACTED] income from its investigation.
- 21) 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.
- 22) 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.

- 23) 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.
- 24) 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.
- 25) The Defendant signed numerous Rights and Responsibilities forms (M-6, M-8, M-11, D-2, D-4, D-5, and D-7) 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.

- 26) 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 his responsibility to report accurate and truthful information and the penalties involved for failure to do so. He signed numerous applications and rights and responsibilities forms during the period in question which supports that he was knowledgeable of those rights and responsibilities. These forms clearly informed him 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 has committed an Intentional Program Violation. Although the Defendant testified that he has disabilities that interfere with his memory at times, he also testified that these disabilities did not interfere with him reporting his wife's income from [REDACTED]. In fact, he stated that he always reported her income every time during the specific interviews with the Department. However, the evidence indicates otherwise. The preponderance of the evidence supports that the Defendant was very well aware of the SNAP eligibility process, including the requirement that all household income be reported at each application, and he intentionally reported inaccurate and misleading information about his household income in order to receive SNAP benefits.
- 5) As a result of the findings of this hearing, the Department is correct in its determination that the Defendant has committed an Intentional Program Violation.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of April, 2011.

**Cheryl Henson
State Hearing Officer**