



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 E. Third Avenue
Williamson, WV 25661**

**Earl Ray Tomblin
Governor**

**Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary**

April 27, 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 March 3, 2011, for the purpose of determining whether an Intentional Program Violation (IPV) was committed by you.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and 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.

An Intentional Program Violation consists of having intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts; or committed any act that constitutes a violation of the Food Stamp Act, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. [WV Income Maintenance Manual Section 20.2,C,2 and 7 CFR Section 273.16 (c)]

Information submitted at the hearing reveals that you intentionally provided false and misleading information about your earned income in order to receive SNAP benefits for which you were not entitled.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. Your disqualification from SNAP will begin effective June 1, 2011.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

-----,

Defendant,

v.

Action Number: 11-BOR-379

**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 concluded on April 27, 2011 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. The hearing was convened on March 3, 2011, at the [REDACTED] County Office of the WV Department of Health and Human Resources (DHHR) in [REDACTED] WV.

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

Brian Shreve, Repayment Investigator, Department's Representative

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

The Hearing Examiner placed participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in SNAP.

V. APPLICABLE POLICY:

7 CFR §273.16 Code of Federal Regulations

Common Chapters Manual, Chapter 700

West Virginia Income Maintenance Manual: Chapter 1.2, Chapter 20.2; Chapter 20.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- M-1 Copy of the Code of Federal Regulations (CFR) §273.16 showing disqualifications for Intentional Program Violations.
- M-2 BVRF Screen print from RAPIDS System showing referral for recoupment.
- M-3 ES-FS-5, SNAP Claim Determination sheet.
- M-4 CMCC Screen Print from RAPIDS showing case comments made on August 10, 2010.
- M-5 Employee salary records from [REDACTED] doing business as [REDACTED] [REDACTED] dated October 1, 2010.
- M-6 Copy of Combined Application and Rights and Responsibilities forms dated and signed by Defendant on January 5, 2009.
- M-7 CMCC Screen Print from RAPIDS showing case comments made on January 5, 2009.
- M-8 Copy of Combined Application and Rights and Responsibilities forms dated and signed by Defendant on July 21, 2009.
- M-9 CMCC Screen Print from RAPIDS showing case comments made on July 21, 2009.
- M-10 Copy of Combined Application and Rights and Responsibilities forms dated and signed by Defendant on January 28, 2010.
- M-11 CMCC Screen Print from RAPIDS System showing case comments made on February 2, 2010.
- M-12 Copy of Income Maintenance Manual Chapter 1.2.E showing customer responsibility for providing accurate information.
- M-13 Copy of Income Maintenance Manual Chapter 20.2 showing SNAP benefit claims and repayment procedures.
- M-14 Copy of Income Maintenance Manual Chapter 20.6.A showing definitions of Welfare Fraud.
- M-15 Copy of IFM-BR-44 Waiver of Administrative Disqualification Hearing form and IFM-BR-44a Notice of Intent to Disqualify form, and appointment letter for pre-hearing conference on December 22, 2010, sent to Defendant on December 14, 2010.

VII. FINDINGS OF FACT:

- 1) The Department is alleging an act of Intentional Program Violation, or IPV, in the Defendant's SNAP case because she allegedly failed to report that she was working and receiving earned income, from February 2009 to August 2010.
- 2) On August 10, 2010, a worker at the WV Department of Health and Human Resources (DHHR), [REDACTED] County office, wrote a comment in Defendant's case record that the worker received information which may have indicated Defendant had received unreported earned income from January 2009 to the date of the recording. (Exhibit M-4) She submitted to the Investigations and Fraud Management (IFM) Unit a referral (Exhibit M-2) based on this information.
- 3) Department's representative, the IFM repayment investigator who investigated this referral, submitted information which indicated that Defendant had worked for [REDACTED] [REDACTED] doing business as the [REDACTED] in [REDACTED] WV. He submitted a report, a print-out of paycheck stub copies, from [REDACTED] indicating Defendant had received pay from that business at least as early as April 30, 2008. (Exhibit M-5.) According to the print-out, Defendant worked intermittently from April 30, 2008 to September 2008, with gaps in the dates of the paycheck stubs covering weeks and sometimes months. However, the print-out indicates that beginning with the December 24, 2008, pay date, Defendant was paid every week, with no gaps in the dates of the paycheck stubs.
- 4) Department's representative submitted a recording from an eligibility worker which reports that Defendant appeared at the [REDACTED] County office of the WV DHHR and completed a SNAP benefits review on January 5, 2009. (Exhibit M-7.) She reported that her household consisted of herself, her husband, and their two children, and that the only income in her household at that time was from her husband's wages. At the conclusion of the application interview, Defendant signed and dated a DFA-RFA-1, a Common Application Form (CAF) which contained information she had given the worker during the interview and a DFA-RR-1, a Rights and Responsibilities form. (Exhibit M-6.) The CAF signature page states,

I understand my responsibility to provide complete and truthful information. I have reviewed or had read to me the information contained in this automated portion of the application form and I understand the information. I understand 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 I am not by law entitled. Under penalty of perjury, I certify that the statements are true and correct.

The DFA-RR-1, Rights and Responsibilities form is a list of applicants' rights and responsibilities for each program for which an applicant applies. The applicant signifies that he or she is aware of each right or responsibility by checking "Yes" or "No" at each item. Under the SNAP Program section of the form, item #4 states,

I understand if I am found (by court action or 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. In addition, I will have to repay any benefits received for which I was not eligible.

Defendant has marked “Yes” at this item.

- 5) Department’s representative submitted another recording from an eligibility worker at the [REDACTED] County office of the WV DHHR which stated that on July 21, 2009, Defendant returned to the [REDACTED] County office of the WV DHHR for a SNAP benefits review. (Exhibit M-9.) She reported at that time that the only income in her household was her husband’s earnings. She signed another Combined Application Form and Rights and Responsibilities document (Exhibit M-8) indicating that she had provided correct information and was aware of the penalties for not doing so.
- 6) Department’s representative submitted a third recording from an eligibility worker at the [REDACTED] County office of the WV DHHR which stated that on January 28, 2010, Defendant returned to the [REDACTED] County office of the WV DHHR for a SNAP benefits review. (Exhibit M-11.) She again reported that the only income in her household was her husband’s earnings. She signed another Combined Application Form and Rights and Responsibilities document (Exhibit M-10) indicating that she had provided correct information and was aware of the penalties for not doing so.
- 7) The Code of Federal Regulations, 7 CFR §273.16(c) (Exhibit M-1), defines an Intentional Program Violation (IPV) as:
 - (c) Definition of intentional Program violation. 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 Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).
- 8) The West Virginia Income Maintenance Manual, Chapter 1.2.E (Exhibit M-12), states:

The client’s responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility . . . The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions: denial of the application; closure of the active AG [assistance group]; removal of the individual from the AG; repayment of benefits; reduction in benefits.
- 9) The West Virginia Income Maintenance Manual, Chapter 9.1.A.2.h, states:
 - h. 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

- 10) The West Virginia Income Maintenance Manual, Chapter 20.2 (Exhibit M-13), states:

IPV's include making false or misleading statements, 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.

- 11) The West Virginia Income Maintenance Manual, Chapter 20.6.A (Exhibit M-14), states:

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false . . . [I]t is not essential that an affirmative representation be made. Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false.

- 12) Defendant testified during the hearing that she called the [REDACTED] office of the WV DHHR, and a worker told her to report her income at her next review. She stated that she did not work full time because she had an extended stay in the hospital due to a medical procedure. She added that when she recovered from the procedure, she had to work full-time in order to pay her medical bills because she did not have medical insurance. She did not make a substantial rebuttal to the Departments evidence and testimony.

VIII. CONCLUSIONS OF LAW:

The Department has established that the Defendant intentionally failed to report that she received earned income during a SNAP benefits reviews on January 5, 2009, July 21, 2009, and January 28, 2010. She signed Common Application Forms to the effect that the only earned income in her household was from her husband's employment, and she signed Rights and Responsibilities documents indicating that she was aware of her responsibility to provide complete and accurate information and of the penalties for not doing so.

IX. DECISION:

Withholding information concerning earned income during a SNAP review and/or application is a clear violation of the regulations. Based on the evidence presented, I find the violations intentional.

The Agency's proposal to apply a SNAP disqualification is **upheld**. The Defendant will be disqualified from participation in SNAP for a period of twelve (12) months to begin effective June 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of April, 2011.

Stephen M. Baisden
State Hearing Officer