



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

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

April 7, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your Supplemental Nutrition Assistance Program Administrative Disqualification Hearing held March 24, 2011. The purpose of this hearing was to determine whether or not you intentionally committed an Intentional Program Violation.

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 the Supplemental Nutrition Assistance Program is based on current policy and regulations. These regulations provide that 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. 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 which was submitted at your hearing revealed that you intentionally misrepresented your relationship status at your SNAP application in order to receive benefits for which you were not entitled.

It is the decision of the State Hearing Officer to Uphold the proposal of the Department to implement a 12 month Intentional Program Violation. The disqualification penalty will begin on May 1, 2011 and will run concurrently for the next 12 months.

Sincerely,

Eric Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Samantha Close, Repayment Investigator

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

-----,

Defendant,

v.

Action Number: 11-BOR-495

**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 a fair 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 fair hearing was convened on March 24, 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:

Samantha Close, Repayment Investigator (RI)

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation and should be disqualified for one year from participation in the Supplemental Nutrition Assistance Program or SNAP.

V. APPLICABLE POLICY:

Code of Federal Regulations, 7 CFR § 273.16
Common Chapters Manual, Chapter 700
West Virginia Income Maintenance Manual, Chapter 20.2; Chapter 9.1.A.2.h

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp Claim Determination
- D-2 Food Stamp Claim Calculation Sheet
- D-3 Combined Application and Review Form with Rights and Responsibilities dated February 17, 2010
- D-4 Certificate of Marriage dated June 5, 2009
- D-5 Computer printout of SNAP Issuance History
- D-6 Computer printout of Food Stamp Allotment Determination
- D-7 Computer printout of Non-Financial Eligibility Determination
- D-8 Letter from Samantha Close, Repayment Investigator dated December 3, 2010
- D-9 Waiver of Administrative Disqualification Hearing and Notification of Intent to Disqualify
- D-10 Computer printout of Benefit Payment History
- D-11 Computer printout of case comments dated February 17, 2010 through March 10, 2010 and June 23, 2010 through July 21, 2010
- D-12 West Virginia Income Maintenance Manual Chapter 1.2, 9.1, 20.1, 20.2, 20.6
- D-13 Computer printout of Investigation Findings dated September 30, 2010
- D-14 Code of Federal Regulations, 7 CFR § 273.16

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on January 31, 2011. The Department contends that the Defendant committed an Intentional Program Violation (IPV) and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a twelve (12) month period.
- 2) On February 18, 2011, a Notice of Scheduled Hearing was issued to the Defendant, via first class mail delivery, to her address of ----- . Such notice was not returned to the State Hearing Officer as undeliverable by the United States Postal Service.
- 3) The hearing was convened at 10:15 A.M., on the requested date, as of 10:30 A.M., the Defendant failed to appear. 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 January 11, 2011, the Department issued the Defendant Exhibit D-9, Notification of Intent to Disqualify, indicating that the Department had reason to believe that the Defendant intentionally violated a SNAP rule. This exhibit documents in pertinent part:

Based on evidence developed through our investigation, the agency believes that
----- intentionally violated the food stamp program by not reporting that [sic] ----
- as her husband at SNAP application.

- 5) Ms. Samantha Close, Repayment Investigator testified that the Defendant applied for the Supplemental Nutrition Assistance Program, hereinafter SNAP, on February 9, 2010. On February 17, 2010, the Defendant completed a face-to-face interview and Exhibit D-3, Combined Application and Review Form, as part of her application for benefits. Ms. Close purported that the Defendant reported at the application that she was not related to her cohabiter, -----, and they did not buy food or prepare meals together (Exhibit D-7). Based on this information, the Department approved the Defendant's SNAP eligibility based on her reported income.

The Defendant completed the Rights and Responsibilities portion of her application for benefits. Exhibit D-1, documents that the Defendant completed and signed the Rights and Responsibilities section of the application, specifically acknowledging question #49 which states:

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.

- 6) Ms. Close testified that the Department received information on June 29, 2010, that the Defendant and her cohabiter had lived together since 2008, married in June 2009 (which the Defendant failed to report at her application for SNAP benefits), and separated in May 2010 (Exhibit D-11). Ms. Close provided Exhibit D-4, Certificate of Marriage dated June 5, 2009 to demonstrate that the Defendant and her cohabiter were married on June 5, 2009 in [REDACTED] [REDACTED] Ms. Close testified that policy requires spouses, who live together, must be in the same assistance group, even if they do not purchase and prepare their meals together. Ms. Close presented Exhibit D-12, West Virginia Income Maintenance Manual Chapter 9.1 which documents in pertinent part:

Purchase and Prepare Separately

Individuals or groups of individuals living with others, but who customarily purchase food and prepare meals separately, are an AG [assistance group].

Customarily purchasing and preparing food separately means that, during the certification period, the client actually purchases and prepares his food separately from the others in the household over 50% of the time, except for an occasional shared meal. This occasional sharing of food does not interfere with his separate AG status.

EXCEPTION: The following individuals who live together must be in the same AG, even if they do not purchase and prepare meals together.

-Spouses

For these purposes, spouses are individuals:

- Who are married to each other under state law; or
- Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors or trades people. Spouses who live together must be in the same AG. There are no exceptions. Couples who live together, but who are not married and do not hold themselves out to the community as husband and wife are not considered spouses.

7) Ms. Close presented Exhibit D-1, Food Stamp Claim Determination Worksheet to establish that by failing to report the marriage at her SNAP application, the Defendant was issued an overpayment of SNAP benefits in the amount of \$704.00 for the months of February 2010 through May 2010.

8) West Virginia Income Maintenance Manual Chapter 1.2 indicates:

The client's responsibility is 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, Chapter 9.1 indicates:

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) Common Chapters Manual 740.11.D states as follows:

Intentional Program Violation - For the purpose of determining through an Administrative Disqualification Hearing whether or not a person has committed an Intentional Program Violation, the following criteria will be used. 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 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.

11) Common Chapters Manual 740.22.M states as follows:

Decision – The Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence that demonstrates that the defendant committed, and intended to commit, an Intentional Program Violation as defined in Section 740.11 of this Chapter. The Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing. In rendering a decision, the Hearing Officer shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and court orders. The decision shall include reference to all pertinent law or policy. If the Hearing Officer rules that the defendant committed an Intentional Program Violation, he or she will include the length and the beginning date of the disqualification penalty.

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern SNAP benefits dictate that a program 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) Evidence presented during the Administrative Disqualification Hearing is clear that the Defendant misrepresented the fact of her marriage to her cohabiter, -----, at her February 9, 2010 SNAP application. The evidence is clear that the Defendant and her cohabiter were married in June 2009, nine months prior to her application for SNAP benefits. Policy requires married individuals, who reside in the same household, to be entered in the same assistance group. By failing to disclose her relationship status at her SNAP application, an overpayment of SNAP benefits was issued to the Defendant in which she was ineligible to receive.
- 4) In accordance with SNAP policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first offense is one (1) year.
- 5) The Defendant is the only assistance group member subject to said disqualification penalty. The one year disqualification penalty will begin May 1, 2011 and will run concurrently for the next 12 months.

IX. DECISION:

Intentionally making a false or misleading statement or misrepresenting facts to secure SNAP benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Department's proposal to apply a twelve (12) month disqualification is upheld.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of April, 2011.

Eric L. Phillips
State Hearing Officer