



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

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 showed that you intentionally provided false information about whether you received SNAP benefits in another state at a time when you applied for SNAP benefits in West Virginia. You intentionally reported that you were not receiving SNAP in another state in order to receive SNAP in West Virginia. The evidence did not show that you intentionally provided false information about your residence or identity in order to receive SNAP benefits.

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 May 1, 2011. The Department has not shown that you made a fraudulent statement or representation regarding your residence or identity in order to receive multiple benefits simultaneously; therefore, a ten (10) year penalty does not apply.

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: 11-BOR-546

**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:

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 Benefit Recovery Referral Screen from Department's computer system dated September 24, 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 June 25, 2010 and supporting documents
- D-5 Case comments from Department's computer system dated June 2010
- D-6 West Virginia Income Maintenance Manual Section 8.2
- D-7 West Virginia Income Maintenance Manual Section 2.2
- D-8 West Virginia Income Maintenance Manual Section 2.2
- D-9 Case comments from Department's computer system dated September 2010 and verification from [REDACTED] Department of Human Services
- D-10 Verification from [REDACTED] Department of Social Services regarding SNAP history
- D-11 Food Stamp Claim Determination forms and supporting documents
- D-12 West Virginia Income Maintenance Manual Section 20.6
- D-13 Notification letters to Defendant dated January 24, 2011
- D-14 West Virginia Income Maintenance Manual Section 20.2.C.2
- D-15 West Virginia Income Maintenance Manual Section 20.2
- D-16 West Virginia Income Maintenance Manual Section 20.2.F.2

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 February 22, 2011. 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; specifically, the Department contends that she made a fraudulent statement or representation regarding her residence in order to receive multiple benefits simultaneously, and is recommending that she be disqualified from participation in SNAP for a period of ten (10) years.
- 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 9:00 a.m., and as of 9:20 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 January 24, 2011 the Department sent the Defendant a Notification of Intent to Disqualify (D-13) 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: receiving SNAP benefits in two states at the same time. The evidence to prove this allegation consists of verification of eligibility from the State of [REDACTED] printout of benefits received from April 2010 through [sic] October 2010, verification of transactions from WV [West Virginia] and [REDACTED]

- 5) The Department presented evidence to show that the Defendant completed a SNAP application (D-4) on June 25, 2010, at which time she was asked if she has received SNAP benefits from another State, and she answered “No”. She signed the application indicating she understood her responsibility to report accurate and truthful information. She also signed the Rights and Responsibilities form (D-4) indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so. She provided the Department with a copy of her expired West Virginia identification card at that time (D-4), which showed a West Virginia address for her. The card was issued on March 18, 2006 and expired on May 18, 2010. Case comments (D-5) entered into the Department’s computer system on June 25, 2010 indicate that the Defendant reported that she lives in a two person household. She reported no bank accounts, no vehicle, no earned income, no self employment, and no financial aid. She reported a rent expense and a utility expense.
- 6) Additional evidence submitted (D-9) in the form of case comments from the Department’s computer system, and verification from the [REDACTED] Division of Social Services, provides that the Department verified on or about September 24, 2010 that the Defendant was also receiving SNAP benefits in [REDACTED]. The verification shows that the Defendant began receiving SNAP benefits in [REDACTED] in May 2010 and received two hundred dollars (\$200.00) monthly through September 2010.
- 7) Additional evidence (D-10) from the [REDACTED] Department of Social Services provides a record of expenditures for the [REDACTED] SNAP benefits. This evidence shows that the Defendant received SNAP benefits from [REDACTED] from May 2010 through November 2010, and also shows that the Defendant made purchases on this card in the State of [REDACTED] from May 1, 2010 through June 5, 2010; she made purchases with this card in West Virginia from July 1, 2010 through September 12, 2010 – except for one purchase on September 3, 2010 in a state other than [REDACTED] or West Virginia. Beginning October 8, 2010, the Defendant began using the [REDACTED] issued card again in the State of Virginia.
- 8) West Virginia Income Maintenance Manual §8.2 states that when an individual, who is receiving SNAP benefits in another state, establishes residence in West Virginia and applies for

benefits the Worker must determine when SNAP benefits in the other state stopped. The individual is eligible in West Virginia for the month following the month he last received benefits in the former state of residence, if otherwise eligible. An individual remains a resident of the former state until he arrives in West Virginia with the intention of remaining indefinitely. Therefore, intent to establish or abandon residency must be known before the state of residence is determined.

9) 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.

10) The Code of Federal Regulations §7 CFR273.16 states in pertinent part:

(b) Disqualification Penalties.

(1) Individuals found to have committed an intentional Program Violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of twelve months for the first intentional Program violation, except as provided under paragraphs (b) (2), (b) (3), (b) (4), and (b) (5) of this section;

(ii) For a period of twenty-four months upon the second occasion of any intentional Program violation, except as provided in paragraphs (b) (2), (b) (3), (b) (4), and (5) of this section; and

(iii) Permanently for the third occasion of any intentional Program violation.

(2) Individuals found by a Federal, State or local court to have used or received benefits in a transaction involving the sale of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) shall be ineligible to participate in the Program:

(i) For a period of twenty four months upon the first occasion of such violation; and

(ii) Permanently upon the second occasion of such violation.

(3) Individuals found by a Federal, State or local court to have used or received benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(4) An individual convicted by a Federal, State or local court of having trafficked benefits for an aggregate amount of \$500 or more shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(5) Except as provided under paragraph (B) (1) (iii) of this section, an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.

- 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 the Rights and Responsibilities form (D-4) on June 25, 2010 when she applied for SNAP benefits, 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. Once an Intentional Program Violation is determined, policy provides that, for a first offense, the penalty is one (1) year; when an Intentional Program Violation involves an individual making fraudulent statements regarding identity or residence in order to receive SNAP simultaneously in more than one State, the penalty period is ten (10) years.
- 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 application process on June 25, 2010 which clearly informed her of these responsibilities.
- 4) The evidence is also clear in that the Defendant intentionally reported false information about her household in order to receive SNAP. She reported during the June 25, 2010 SNAP application interview that she did not receive SNAP benefits from another state, when in fact she was receiving SNAP benefits from the State of [REDACTED] at the time of her June 25, 2010 application. She withheld this information from the Department. This act shows clearly that she has committed an Intentional Program Violation.
- 5) The Department's contention that she has made a fraudulent statement or misrepresentation regarding her residence or identity, however, has not been shown. The totality of the evidence supports that the Defendant was living in West Virginia when she applied for SNAP benefits on June 25, 2010. The [REDACTED] SNAP purchase history shows that she used her [REDACTED] SNAP card in West Virginia during the timeframe just after she applied for SNAP in West Virginia.
- 6) The Department was correct in its determination that the Defendant has committed an Intentional Program Violation by intentionally reporting false information about her household circumstances; however, it has not shown that she made a fraudulent statement regarding her identity or residence in order to receive SNAP. Therefore, having found that the Defendant committed an IPV, a one (1) year disqualification is applicable.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**.
The penalty will begin May 1, 2011.

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**