



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

May 17, 2011

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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 May 12, 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 July 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-608**

**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 May 12, 2011.

It should be noted that this hearing was previously scheduled for April 19, 2011, but was continued at the Claimant's request.

**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

Natasha Jemerison, 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:**

**Movant's Exhibits:**

- D-1 Benefit Recovery Referral Screen from Department's computer system
- D-2 West Virginia Income Maintenance Manual §1.2.E
- D-3 Food Stamp Claim Determination forms and supporting documents
- D-4 Code of Federal Regulations 7 CFR 273.16
- D-5 Application form dated September 30, 2004
- D-6 Rights and Responsibilities forms dated September 30, 2004
- D-7 Application form signed September 16, 2006
- D-8 Application form signed August 20, 2008
- D-9 Verification from [REDACTED] Housing dated March 30, 2009
- D-10 West Virginia Income Maintenance Manual §2.2
- D-11 West Virginia Income Maintenance Manual §20.6
- D-12 Notification letters dated February 9, 2011
- D-13 WV Income Maintenance Manual §2.2

**Defendant'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 rental obligation in order to receive SNAP, and is recommending that she be disqualified from participation in SNAP for a period of one (1) year.

- 2) On or about February 9, 2011, the Department sent a Waiver of Administrative Disqualification Hearing (D-12) form to the Defendant, indicating that it believed she received SNAP by means of an intentional violation of a program rule. The letter alleges that the Defendant reported she was paying the full amount of rent when she was only paying a portion. The Department contends that the Defendant received a larger deduction from her income based on intentionally reported erroneous information, resulting in her receiving more SNAP than she was eligible to receive.
- 3) The Department presented written evidence (D-5) to show that on September 30, 2004 the Defendant applied for SNAP, at which time she reported that she pays three hundred fifty dollars (\$350.00) monthly toward her rent obligation. She signed the Rights and Responsibilities form (D-6) on the same date indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 4) Additional written evidence (D-7) in the form of a self-completed SNAP review form shows the Defendant completed the form on September 16, 2006, at which time she indicated that she pays three hundred fifty dollars (\$350.00) toward her rent obligation monthly. She signed the form indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 5) Additional written evidence (D-8) in the form of a self-completed SNAP review form shows the Defendant completed the form on August 20, 2008, at which time she indicated again that she pays three hundred fifty dollars (\$350.00) toward her rent obligation monthly. She signed the form indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 6) Additional written evidence (D-9) in the form of verification provided by the [REDACTED] [REDACTED] agency, shows that during the period of May 18, 2004 through April 30, 2005 the Defendant received housing assistance from the agency which reduced her personal rental obligation to seventy dollars (\$70.00) monthly; from May 1, 2005 through April 30, 2006 her rental obligation was one hundred thirty dollars (\$130.00) monthly; from May 1, 2006 through April 30, 2007 the Defendant's rental obligation was one hundred thirty six dollars (\$136.00); from May 1, 2007 through April 30, 2008 the Defendant's rental obligation was one hundred forty nine dollars (\$149.00) monthly; from May 1, 2008 through April 30, 2009 the Defendant's rental obligation was one hundred ten dollars (\$110.00) monthly; and from May 1, 2009 through April 30, 2010 the Defendant's rental obligation was one hundred thirty two dollars (\$132.00) monthly. The listed total rental obligation per month is four hundred sixty nine dollars (\$469.00), and shows that the housing agency paid the remainder of the monthly obligation on behalf of the Defendant.
- 7) The Defendant contends that she did not intentionally report false information. She stated that she has already reported her rent obligation and that it has always been the same. She added that when she "got on housing" she reported that change to the Department. She testified that she has been on "really really hard narcotics" for the last several years, and purported this may have affected her thinking. She stated that she was taking four (4) Prozac per day, three (3) Klonopin daily, two (2) Soma daily, and that she has been dealing with a father with "full blown" Alzheimer's and a mother who is elderly. The Defendant stated that she always brought the housing letters with her for each review interview; however, the Department claims there is no evidence of this in the case record.

- 8) The Department contends that the Defendant intentionally did not report that a housing agency was paying a portion of her rental obligation monthly 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 November 1996, having signed numerous applications and rights and responsibilities forms during that timeframe, which she claims shows that the Defendant is well informed in the reporting process and its requirements.
- 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) 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.
- 11) 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.
- 12) 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.
- 13) The Defendant signed numerous Rights and Responsibilities forms during the period in question 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.

14) 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:

- 1<sup>st</sup> Offense: 1 year
- 2<sup>nd</sup> Offense: 2 years
- 3<sup>rd</sup> 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 accurate and truthful information and the penalties involved for failure to do so. She signed numerous applications and rights and responsibilities forms during the period in question and before which supports that she was knowledgeable of those rights and responsibilities. These forms clearly informed her 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 by repeatedly reporting false information about her household rental obligation. The Defendant's testimony was contradictory and unreliable; at times claiming her memory may have lapsed because of medication and other issues causing her to report inaccurate information, and other testimony indicating she reported the information to the Department correctly. The evidence does not support that the Defendant reported the housing agency's payments on her behalf at each review interview, and the Defendant's claims to memory issues contributing to her not reporting accurate information are not found to be sufficient to explain

why for several years she did not report the housing agency's payments on her behalf, but reported other information correctly.

- 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**. Your penalty will begin July 1, 2011.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 13<sup>th</sup> Day of May, 2011.**

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**Cheryl Henson  
State Hearing Officer**