



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 22, 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 21, 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 withheld 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 begins June 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-678

**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, and was convened on April 21, 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:

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:

Department's Exhibits:

- D-1 Benefit Recovery Referral Screen from Department's computer system dated December 20, 2010
- D-2 West Virginia Income Maintenance Manual §1.2.E
- D-3 Food Stamp Claim Determination forms
- D-4 Code of Federal Regulations §7 CFR273.16
- D-5 Application dated August 5, 2010
- D-6 Rights and Responsibilities form signed August 5, 2010
- D-7 Income verification from "[REDACTED]", dated September 21, 2010
- D-8 West Virginia Income Maintenance Manual Section 2.2
- D-9 West Virginia Income Maintenance Manual Section 20.6
- D-10 Notification letters dated December 20, 2010

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 March 4, 2011. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and made a fraudulent statement or misrepresentation regarding her household income in order to receive SNAP, and is recommending that she be disqualified from participation in SNAP for a period of one (1) year.
- 2) Notification of the April 21, 2011 hearing was mailed to the Defendant on or about March 11, 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 11:00 a.m., and as of 11:17 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 December 20, 2010 the Department sent the Defendant a Notification of Intent to Disqualify (D-10) form, indicating that it had reason to believe she intentionally violated a SNAP rule by not reporting earned income from “Fruth”. The Department included a “Waiver of Administrative Disqualification Hearing” form, which is a form with which the Defendant may respond to the allegations. The form allows the recipient an opportunity to waive his or her right to an administrative hearing, or choose from other options. Once signed and returned to the Department, the form shows the Defendant’s response to the allegations. In this instance, the Defendant returned the form; however, she selected all three options. The options available on the form were:
 1. I admit to the facts as presented and understand that a disqualification penalty will be imposed if I sign this waiver.
 2. I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result.
 3. I have read this notice and choose my right to have an administrative hearing.

The Defendant included a handwritten note on the form. She wrote “I misunderstood. I was told if my income did not increase to 2800.00 month it didn’t change anything! ☺”

- 5) The Department representative, Natasha Jemerison, is a State Repayment Investigator. She testified that she is the case worker who worked on the Defendant’s case. She stated that when she received the “Waiver of Administrative Disqualification Hearing” form back from the Defendant with all three (3) options selected and additional notes added, she contacted the Defendant by telephone and discussed her responses. She stated that she informed the Defendant that she only needed to check one (1) of the boxes on the form. She went on to say that, in discussing the Defendant’s included handwritten note, she explained to her that when an individual completes an application interview, that individual is required to report all their current income and other circumstances. She stated that the Defendant responded by stating that she understood that when she completed applications she was required to report all her income, but she did not remember having completed an application interview. Ms. Jemerison stated that the Defendant asked that another form be sent to her; she stated she would complete it by choosing only one (1) option. Ms. Jemerison stated that she mailed the Defendant another form, but it was never returned.
- 6) The Department presented evidence to show that the Defendant completed a SNAP application (D-5) on August 5, 2010. She signed the application indicating she understood her responsibility to report accurate and truthful information. She also signed the Rights and Responsibilities form (D-6) indicating she understood her responsibility to report accurate and

truthful information and the penalties involved for failure to do so. The Defendant did not report income from “Fruth” during this interview.

- 7) Additional evidence submitted (D-7) in the form of verification from ‘[REDACTED]’, shows the Defendant was working at ‘[REDACTED]’ at the time of the August 5, 2010 application interview. This evidence shows that the Defendant was paid continuous wages from the company beginning in March 2010 and continuing through September 15, 2010. The Defendant was paid twice during the month of application, August 2010, for a total of seven hundred ninety seven and fifty-one cents (\$797.51).
- 7) 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.
- 8) 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.
- 9) 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.
- 10) 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.
- 11) The Defendant signed numerous Rights and Responsibilities forms 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.

12) 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 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 August 5, 2010 which clearly informed her of these responsibilities.
- 4) The evidence is also clear in that the Defendant intentionally withheld information about her household income in order to receive SNAP. She withheld information regarding her earnings from '██████' during the August 5, 2010 SNAP application interview. She did not report that she was receiving regular continuous earnings from the company at the time of the interview.
- 5) The Department was correct in its determination that the Defendant has committed an Intentional Program Violation by intentionally withholding information about her household income.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of April, 2011.

**Cheryl Henson
State Hearing Officer**