



**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**

May 27, 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 May 18, 2011. The purpose of this hearing request 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 made a false statement at your SNAP application in August 2010, by reporting your son as a member of your household when in fact he was a resident of the ----- Juvenile Center since May 2010.

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

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Lori Woodward, Repayment Investigator

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

IN RE: -----,

Defendant,

V.

ACTION NO.: 11-BOR-696

**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.

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:

Lori Woodward, Repayment Investigator

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Combined Application and Review Form with associated Rights and Responsibilities dated August 11, 2010
- D-2 Notice of Decision dated August 12, 2010
- D-3 Application for West Virginia School Clothing Allowance dated July 26, 2010
- D-4 Application for West Virginia Health Care Coverage for Kids and Expectant Moms dated August 9, 2010
- D-5 Referral and Communications Form (DHS-1) dated August 23, 2010, with supporting documentation
- D-6 Food Stamp Claim Determination
- D-7 Notification of Intent to Disqualify
- D-8 West Virginia Income Maintenance Manual Chapter 1.2, 1.4, 2.2, and 9.1
- D-9 West Virginia Income Maintenance Manual Chapter 20.2 and Common Chapters 740-740.11

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on March 7, 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) The hearing was originally scheduled to convene on April 13, 2011. On March 11, 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 as undeliverable by the United States Postal Service; however, the State Hearing Officer learned on April 13, 2011, that the address submitted by the Department was incorrect and the scheduled hearing was continued to ensure proper notice to the Defendant.
- 3) On April 13, 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.
- 4) The hearing convened at 10:30 A.M., on the requested date, as of 10:45 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.
- 5) On January 31, 2011, the Department issued the Defendant Exhibit D-7, 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 the evidence developed through our investigation, the agency believes that ----- intentionally violated the food stamp program by: reporting ----- in her household when he in fact was being held in [sic] court order facility.

- 6) Lori Woodward, Repayment Investigator testified that the Defendant completed Exhibit D-1, Combined Application and Review Form on August 11, 2010, as part of her application for the Supplemental Nutrition Assistance Program, hereinafter SNAP. Exhibit D-1 documents that the Defendant reported a household of herself, her son -----, and her daughter -----.

Additionally, the Defendant completed the Rights and Responsibilities portion of her application for SNAP. 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.

Based on the information supplied at the application, the Department issued the Defendant Exhibit D-2, Notice of Decision, informing her that SNAP benefits were approved effective September 1, 2010.

- 7) Ms. Woodward indicated that the Defendant applied for the West Virginia School Clothing Allowance on July 26, 2010 (Exhibit D-3) and children's Medicaid assistance on August 9, 2010 (Exhibit D-4). Both exhibits document that the Defendant reported herself, her son, and daughter as members of the household.
- 8) On August 23, 2010, the Department received Exhibit D-5, Referral and Communications Form (DHS-1) from the Division of Juvenile Services, hereinafter DJS. This exhibit documents in pertinent part:

The child, ----- was placed in DJS custody on 5-24-10 and has been at ----- since May. The caretaker has not reported him out of her household and is receiving MQCA and SNAP benefits for the child.

Supporting documentation in the exhibit consists of Client Contact Reports from DJS. This documentation indicates that the Defendant's child, -----, was ordered into placement at the ----- Juvenile Center until he could be transferred to the [REDACTED] County Detention Center. Melissa Stinnette, a worker from DJS, documented on September 17, 2010, the following information in the supporting documentation:

This worker met with ----- and ----- at their home. ----- was released from ----- the day before to await placement on Monday. ----- advised that she is to have him at the [REDACTED] [sic] County Detention Center by 6:30 in the morning.

- 9) Ms. Woodward presented Exhibit D-6, Food Stamp Claim Determination to establish that by misrepresenting the facts concerning her son's residence, an overpayment of SNAP benefits

was issued to the Defendant in the amount of \$434.00 for the months of August 2010 through October 2010.

- 10) 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.

- 11) 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

- 12) 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.

- 13) 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) The Evidence presented during the Administrative Disqualification Hearing revealed that the Defendant made a false statement at her August 11, 2010 application for SNAP assistance by reporting her son as a member of the household when he had been placed DJS custody five months prior to her application. Evidence is clear that the Defendant's son was placed in DJS custody at the ----- Juvenile Detention Center effective May 24, 2010 and remained in such custody until September 16, 2010, in which he was transferred to the [REDACTED] County Detention Center. The evidence revealed that the Defendant's son was in the Defendant's household for one weekend during the documented timeframe, while awaiting his admission to the [REDACTED] County Detention Center. Furthermore, the Defendant intentionally misrepresented her household composition by reporting her son as a member of the household at a July 2010 application for the West Virginia School Clothing Allowance and an August 2010 application for children's Medicaid benefits. The result of such willful misrepresentation was an overpayment of SNAP benefits for which the Defendant 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 July 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 May , 2011.

Eric L. Phillips
State Hearing Officer