



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

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 circumstances 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/Jennifer Butcher, Kanawha DHHR

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

-----,

Defendant

v.

Action Number: 11-BOR-757

**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.

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

Jennifer Butcher, 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 WV Income Maintenance Manual §1.2.E
- D-3 Code of Federal Regulations 7 CFR 273.16
- D-4 Application and Rights and Responsibilities form dated October 6, 2009 and supporting Documents
- D-5 Page eight (8) of the October 6, 2009 application
- D-6 Medicaid application dated March 30, 2010 and supporting documents
- D-7 Application dated April 5, 2010 and supporting documents
- D-8 Application dated July 19, 2010 and supporting documents
- D-9 Medicaid application dated August 24, 2010 and supporting documents
- D-10 Application dated October 4, 2010 and supporting documents
- D-11 Telephone Complaint Guide form dated August 27, 2010
- D-12 Front-End Fraud Unit Investigative Findings with supporting documents dated October 29, 2010
- D-13 West Virginia Income Maintenance Manual §2.2
- D-14 West Virginia Income Maintenance Manual §2.2.B.1
- D-15 West Virginia Income Maintenance Manual §2.2
- D-16 Food Stamp Claim Determination forms and supporting documents
- D-17 West Virginia Income Maintenance Manual §20.6.A
- D-18 Notification letters dated February 22, 2011
- D-19 Information submitted by Defendant to Department on March 7, 2011
- D-20 Rental lease agreement from [REDACTED] dated March 6, 2011
- D-21 Sworn written statement dated March 8, 2011
- D-22 Signed Waiver of Administrative Disqualification hearing signed March 15, 2011
- D-23 West Virginia Income Maintenance Manual §20.2.C.2
- D-24 West Virginia Income Maintenance Manual §20.2.E
- D-25 West Virginia Income Maintenance Manual §20.2.F.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 March 16, 2011. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and made a fraudulent statement or misrepresentation regarding her household composition 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 22, 2011, the Department sent a Waiver of Administrative Disqualification Hearing (D-18) 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 failed to report ----- earnings from [REDACTED] Written evidence (D-22) shows that the Defendant signed the Waiver of Administrative Disqualification Hearing form on March 15, 2011, indicating that she had read the notice and that she chose to have an administrative hearing.
- 3) The Department presented written evidence to show that on October 6, 2009, the Defendant applied for SNAP (D-4), at which time she reported she reported four (4) individuals living in her household; herself and her three (3) children. She did not report ----- as a member of her household. She signed the Rights and Responsibilities (D-4) form indicating that she understood her responsibility to report accurate and truthful information and the penalties for failure to do so. She reported (D-5) on page eight (8) of the October 6, 2009 application that --- --is the "absent parent" for all her children, and that he was paying her no child support.
- 4) Additional written evidence (D-6) shows that the Defendant applied for Medicaid for her children on March 30, 2010 at which time she reported that her household consisted of herself and three (3) children. She again did not report that -----, the father of her children, lived in her home. She signed the application indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 5) Additional written evidence (D-7) shows that the Defendant self-completed a SNAP review application on March 22, 2010 at which time she again did not report that ----- lived in her household. She signed the form on April 1, 2010 certifying that all statements on the form had been read by her or to her and that she understood them. She also certified with her signature that all the information provided was true and correct.
- 6) Additional written evidence from the Department (D-8) provides that the Defendant applied for the School Clothing Allowance (SCA) program on July 19, 2010, at which time she did not report that ----- lived in her household. She signed the document certifying the information she provided was true and correct to the best of her knowledge.
- 7) Additional written evidence from the Department (D-9) provides that the Defendant applied for Medicaid for her children on or about August 24, 2010, at which time she reported receiving no child support and did not report ----- living in her household. She signed the application acknowledging that she may be required to make repayments that result from incorrect or false information or failing to report changes on the form, as well as her understanding that willfully providing false statements can result in charges of fraud.

- 8) Additional written evidence (D-10) shows that the Defendant self-completed an application form on or about October 4, 2010 at which time she did not report -----living in her household. She signed the document indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 9) Additional evidence (D-12) shows that the Department conducted an investigation into the Defendant's household composition and determined that -----"appears to be in the home with" the Defendant. Testimony from the Department's Front-End Fraud Unit investigator, Christina Saunders, supports that she determined that -----lives with the Defendant.

Ms. Saunders testified that her investigation began when she received a complaint (D-11) from the "State Office", which is the headquarters for her Unit, on August 27, 2010. She stated that the State Office had received an anonymous complaint alleging that -----lived with the Defendant. She stated she subsequently received two (2) additional anonymous complaints alleging that -----lived with the Defendant.

Ms Saunders stated that she verified that -----is employed with [REDACTED] Corporation (D-12), and that he reported the same home address as the Defendant to this employer. She stated that she also checked the Department's child support data system, which showed (D-12) that there has been no open case since 2006. She added that she also checked the Department's available information from the Department of Motor Vehicles' data system and found that -----reported the same residential address as the Defendant during a November 16, 2009 issue date for his driver's license renewal, and that he titled a vehicle on June 28, 2010 also reporting the same mailing address as the Defendant. She added that she checked social networking sites on the internet and found that the Defendant has a "MySpace" account (D-12) in which she stated that she is the "wife of -----" and that he is the father of her children. Also, in the section marked "Television" she wrote "... basically I watch what -----and the girls watch." The Defendant also listed on the site that she is in a relationship; however, there is no way to determine specifically when the entries were made. Ms. Saunders also provided a sworn written statement (D-12) from a neighbor dated October 25, 2010. The neighbor provided that she has lived at her home for fifteen (15) years, and that she knows a "couple" that lives at "5221". She added that the family has three (3) children. The neighbor also provided that she does not socialize with the family, but that they have lived at 5221 for "about a year".

- 10) Jennifer Butcher, a State Repayment Investigator for the [REDACTED] County, West Virginia, Department of Health and Human Resources' office in [REDACTED] West Virginia, testified that she spoke with the Defendant on March 3, 2011 and explained the Department's position in regard to the intentional program violation. She stated that the Defendant told her that -----'s name is not on her lease and that he does not live with her. She stated that she requested that the Defendant provide her with a copy of the lease and the name and contact information for the individual with whom -----lives. She added that the Defendant provided her with a copy of the lease (D-19) and contact information for an individual named ----- . She stated that the lease provided lists -----as a tenant. She stated that she spoke with the landlord and the landlord informed her that -----was added to the lease for financial reasons to guarantee the rent would be paid, and that she does not know whether -----lives in the home as she rarely visits the home. Ms. Butcher added that she spoke with -----, and that he informed her that -----stays "sometimes" in his home, but that ----- would not elaborate further.

- 11) Written evidence (D-20) from the Defendant's landlord provides that there are four (4) individuals living in the home, the Defendant and her three (3) children. In this written statement, the landlord states that -----guaranteed the Defendant's rent, but that he does not live there. This statement is dated March 6, 2011.
- 12) Written evidence (D-21) shows the Department obtained a sworn written statement from a neighbor who lives near -----, the individual -----is purported to live with. The neighbor states that she knows -----'s family. She stated that no one by the name of ----- lives with -----.
- 13) The Defendant contends that -----does not live with her. She stated that she does not feel it is wrong for her to allow -----to utilize her mailing address as his own, since he does not have a permanent address. She stated that she does not control where ----- stays every day, and that she knows he has stayed at -----'s home on occasion. She stated that he could also be staying with another female; however, she does not know the circumstances or his whereabouts when he is not with her. She stated that ----- is at her home everyday to be with the children. She stated that she and ----- work different shifts, so when she is gone he is with the children, because she has no other family to depend on. She stated that she is not married to -----, and added, regarding the MySpace entries, "That was just something, I don't know, people say sometimes, like after you have been together for a while, you say you are somebody's wife, but we were never married, honestly". She added that just because she is in a relationship does not mean that -----lives with her. She stated that when -----gets off work in the evenings he comes to her house and he occasionally shares meals with her family.

The Defendant testified that she earns approximately one thousand one hundred dollars (\$1100.00) monthly after taxes, and she pays her utilities which come to approximately four hundred dollars (\$400.00) monthly. She added that she usually pays about two hundred dollars (\$200.00) toward her rent, and that -----pays the remainder of approximately five hundred dollars (\$500.00) on her behalf. She stated that he also helps buy food on occasion and he buys all the children's clothes. She stated that -----eats his meals with her family approximately two (2) to three (3) times per week, and he stays overnight approximately two (2) nights per week. She added that he has a key to the home. -----does not pay a formal child support amount. She stated that since her SNAP case closed in November 2010 -----has also been helping with purchasing groceries. She stated that he goes to the grocery store with her and will sometimes give her one hundred dollars (\$100.00) for purchasing food. She stated that -----does not keep any personal items at her home. She added that all her utilities are listed in her name only. The Defendant never reported as income to the Department any of the purported funds received by her from -----.

- 14) 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.
- 15) 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.

- 16) 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.
- 17) 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.
- 18) The Defendant signed numerous Rights and Responsibilities forms (M-6, M-8, M-11, D-2, D-4, D-5, and D-7) 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.

- 19) 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 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 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. It is clear from the evidence that -----was living in the Defendant's home during the period in question. She never reported that he was living in her home, nor did she report his income from employment. The Defendant's claims that he did not live with her but provided financial support are not credible and are not supported by the evidence.
- 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 17th Day of May, 2011.

**Cheryl Henson
State Hearing Officer**