



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

June 13, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 26, 2011 for the purpose of determining whether or not an Intentional Program Violation occurred.

In arriving at a decision, the State Hearings 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 (SNAP) 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 (WV Income Maintenance Manual § 20.2 C(2) and 7 CFR Section 273.16 (c)].

The information submitted at your hearing revealed that you committed an Intentional Program Violation by reporting that you were not a drug felon at your July 2008 SNAP application, when in fact your felony conviction occurred in February 2006.

It is the decision of the State Hearings Officer that you committed an Intentional Program Violation. You will continue to serve your permanent disqualification from participation in SNAP.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Tammy Hollandsworth, Repayment Investigator

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 11-BOR-795

**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 concluded on April 26, 2011 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 program entitled Supplemental Nutrition Assistance Program (SNAP) is administered by the West Virginia Department of Health and Human Resources.

The purpose of 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 EBT 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 (participated by phone)

-----, Witness for Defendant (participated by phone)

Tammy Hollandsworth, Repayment Investigator

Presiding at the Hearing was Kristi Logan, 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 Defendant committed an Intentional Program Violation.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 1.2 E and 9.1 A

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 SNAP Claim Determination
- D-3 SNAP Issuance History Screen (IQFS) from RAPIDS Computer System
- D-4 SNAP Allotment Determination Screen (EFAD) from RAPIDS Computer System
- D-5 Case Members History Screen (AQCM) from RAPIDS Computer System
- D-6 Case Comments (CMCC) from RAPIDS Computer System
- D-7 [REDACTED] County Circuit-Criminal Division Case Details
- D-8 WV Income Maintenance Manual § 9.1 A(2)g
- D-9 Combined Application and Review Form and Rights and Responsibilities dated July 1, 2008
- D-10 12-Month Review Form dated June 11, 2009
- D-11 Combined Application and Review Form and Rights and Responsibilities dated July 14, 2009 and Statement from -----
- D-12 Notification of Intent to Disqualify dated January 25, 2011
- D-13 WV Income Maintenance Manual § 1.2 E
- D-14 WV Income Maintenance Manual § 20.1 and 20.2
- D-15 WV Income Maintenance Manual § 20.6
- D-16 Code of Federal Regulations – 7 CFR §273.16

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from Department of Health and Human Resources' Repayment Investigator, Tammy Hollandsworth on March 25, 2011. The Department contends that Defendant has committed an Intentional Program Violation (IPV) and is recommending that he be disqualified from participation in SNAP for 12 months.
- 2) Defendant applied for SNAP on July 1, 2008. He was accompanied by his authorized representative and roommate, -----, Claimant and ----- reported Defendant receiving SSI and that he lived with -----, but purchased and prepared meals separately from him. SNAP benefits were approved based on the information provided (D-6 and D-9).

- 3) On September 24, 2008, -----of [REDACTED] Medical Center in [REDACTED] [REDACTED] called Defendant's caseworker and reported that Defendant had moved to [REDACTED] and advised of his new address. SNAP benefits were closed as Defendant was no longer residing in West Virginia (D-6).
- 4) ----- called Defendant's caseworker on September 30, 2008 stating Defendant had not moved and still lived with him. SNAP benefits were reopened. ----- also requested a new Electronic Benefits Transaction (EBT) card on Defendant's behalf (D-6).
- 5) On July 14, 2009, ----- reapplied for SNAP benefits on Defendant's behalf and presented a written statement from Defendant authorizing him to do so. Defendant's SNAP benefits were recertified based on the information provided by ----- (D-6 and D-11).
- 6) The Department received information that Defendant was convicted of a felony possession of a controlled substance on February 10, 2006 (D-6 and D-7).

The Department contends that Defendant was a convicted drug felon prior to his July 2008 SNAP application and this information was withheld from his caseworker. Defendant signed the Combined Application and Review Forms and Rights and Responsibilities forms at his July 2008 SNAP application attesting that he was not a convicted drug felon, also acknowledging a permanent disqualification from SNAP if he were a drug felon (D-9). The result of the misrepresentation was an overpayment of SNAP of \$2235 issued from July 2008 through June 2010 (D-2 and D-3).

- 7) Defendant testified that he moved back to Virginia to live with his mother around August 2008. Defendant stated ----- kept his EBT card and spent his SNAP benefits. He stated ----- created the pin number for the EBT card and that after he moved to Virginia, ----- continued to receive Defendant's SNAP and spend them. Defendant stated he did not have any contact with ----- after he moved to [REDACTED]
- 8) -----, Defendant's mother, testified that Defendant moved back to [REDACTED] in August 2008. She stated ----- was Defendant's SSI payee while he lived with ----- and ----- called him to send Defendant's SSI check to him in [REDACTED] -----stated ----- would not forward Defendant's SSI money so she had herself declared his payee. -----stated Defendant was incarcerated in 2009 for one (1) year so he could not have been living in West Virginia with -----.
- 9) WV Income Maintenance Manual § 1.2 E states:

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. When the client is not able to provide the required verification, the Worker must assist him. The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions:

- Denial of application
- Closure of the active Assistance Group (AG)

- Removal of the individual from the AG
- Repayment of benefits
- Reduction in benefits

10) WV Income Maintenance Manual § 9.1 A(2)g states:

Persons who are excluded by law as found below are ineligible and may not be a separate AG. The periods of ineligibility are as follows:

Reason for Exclusion: Convicted of a felony offense which occurred on or after 8/23/96 which involved possession, use or distribution of a controlled substance as defined by section 806 (6) of the Controlled Substance Act.

Length of Exclusion: Permanent

VIII. CONCLUSIONS OF LAW:

- 1) In order for an Intentional Program Violation to be established, it must be shown by clear and convincing evidence that the Defendant intentionally made a false or misleading statement or withheld or concealed facts from the Department.
- 2) Defendant failed to disclose his status as a convicted drug felon during his July 2008 SNAP application. Defendant also signed the Combined Application and Review Form and Rights and Responsibilities further attesting that he was not a drug felon. By withholding his drug conviction from his caseworker, Defendant was approved for SNAP benefits for which he was not entitled to receive.

IX. DECISION:

It is the decision of the State Hearing Officer that Defendant committed an Intentional Program Violation. However, in light of Defendant's permanent disqualification as a convicted drug felon, no disqualification period is ordered.

This decision does not have any bearing on a repayment as purported by the Department and Defendant has a right to request a separate hearing if a repayment is pursued.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th day of June 2011.

Kristi Logan
State Hearing Officer