



**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**

June 2, 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 31, 2011. The purpose of this hearing 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 withheld information concerning your employment with Shepherd University at your application and recertification for SNAP benefits, when in fact you were currently employed.

It is the decision of the State Hearing 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-959

**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. This hearing was convened on May 31, 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
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
West Virginia Income Maintenance Manual, Chapter 20.2; Chapter 9.1.A.2.h

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated June 9, 2008
- D-2 Combined Application and Review Form with Rights and Responsibilities and computer printout of case comments dated October 29, 2008
- D-3 Employee Wage History for -----
- D-4 Food Stamp Claim Determination
- D-5 Notification of Intent to Disqualify dated March 31, 2011
- D-6 Waiver of Administrative Disqualification dated April 8, 2011
- D-7 Hearing Request
- D-8 West Virginia Income Maintenance Manual Chapter 1.2, 1.4, 2.2, 9.1
- D-9 West Virginia Income Maintenance Manual Chapter 20.2 and Common Chapters 740.11

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on April 14, 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) On March 31, 2011, the Department issued the Defendant Exhibit D-5, Notification of Intent to Disqualify, indicating that the Department had reason to believe 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 intentionally withholding income info [sic] on 10/29/08 SNAP review.

- 3) Ms. Lori Woodward testified that the Defendant applied for SNAP assistance on June 6, 2008. At the application, the Defendant reported her husband's employment at [REDACTED] as the only income available to the household. Exhibit D-1, Notice of Decision documents that the Claimant's SNAP assistance was based on reported income of \$1489.95 and was approved effective July 1, 2008.
- 4) On October 29, 2008, the Defendant completed Exhibit D-2, Combined Application and Review Form as part of a recertification for SNAP benefits. Exhibit D-2 documents that the Defendant reported her husband's employment income from [REDACTED] as the only income available to the household. Additionally, Exhibit D-2 documents that the Defendant reported that she is unemployed and stays home with the children. The Defendant completed and signed

the Rights and Responsibilities portion Exhibit D-2, 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.

- 5) On June 19, 2009, the Repayment Investigator received Exhibit D-3, Employee Wage History for ----. This exhibit demonstrates that the Defendant was employed with [REDACTED] University from August 1, 2002 through January 6, 2009. Additionally, the exhibit documents the Defendant's employment wages from June 13, 2008 through February 13, 2009.
- 6) Ms. Woodward testified that the Defendant failed to report her income at her SNAP application and redetermination. Ms. Woodward presented Exhibit D-4, Food Stamp Claim Determination worksheet to demonstrate that by withholding the employment information, an overpayment of SNAP benefits was issued to the Defendant in the amount of \$1896.00 for the months of June 2008 through February 2009.
- 7) The Defendant stated that she is a nine month contract employee with [REDACTED] University in the food services division and indicated that she terminated her employment in February 2009, but later was rehired in November of the same year. The Defendant stated that she does not have employment for the months of June, July, half of August, and December for the Christmas holiday. She indicated that she has always related this income and has informed the Department in the past that she was a full-time employee with insurance benefits and did not need to apply for medical benefits for her children. The Defendant believes that the worker misunderstood her statements about staying home with her children because she was on summer vacation at the time.
- 8) 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.
- 9) 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
- 10) 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.

11) 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 reveals that the Defendant withheld information concerning her employment with [REDACTED] University at her June 6, 2008 SNAP application. Furthermore, the Defendant demonstrated intent to mislead the Department by withholding information concerning her employment income at an October 29, 2008 SNAP recertification. The evidence is clear the Defendant was employed with [REDACTED] University from August 1, 2002 through January 6, 2009, and received employment income on a continuous basis from June 2008 through February 2009. 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 June, 2011.

Eric L. Phillips
State Hearing Officer