



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

June 10, 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 (ADH) held June 9, 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 [SNAP] 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 provided false 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 begins July 1, 2011.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Danita Bragg, Raleigh DHHR

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 11-BOR-998

**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 June 9, 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:

Danita Bragg, 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 [SNAP] Claim Determination Forms, two (2) pages
- D-2 [SNAP] calculation screens from Department's computer system, five (5) pages
- D-3 [SNAP] issuance history screens from Department's computer system, two (2) pages
- D-4 Application form and supporting documents including Rights and Responsibilities form Dated October 8, 2004, eighteen (18) pages
- D-5 Application form and Rights and Responsibilities form dated September 12, 2005, eighteen (18) pages
- D-6 Income verification from [REDACTED] dated January 10, 2006, three (3) pages
- D-7 Sworn written statement from Defendant dated May 1, 2006, three (3) pages
- D-8 West Virginia Income Maintenance Manual Section 1.2.E
- D-9 West Virginia Income Maintenance Manual Section 2.2.B
- D-10 West Virginia Income Maintenance Manual Section 20.2
- D-11 Code of Federal Regulations §7 CFR 273.16

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing, hereinafter ADH, was received by the Board of Review from the Department of Health and Human Resources, hereinafter Department, on April 26, 2011. The Department contends that the Defendant has committed an Intentional Program Violation, hereinafter 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 June 9, 2011 hearing was mailed to the Defendant on or about May 5, 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 10:00 a.m., and as of 10:21 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) The Department presented evidence to show (D-4) that on October 8, 2004 the Defendant completed an SNAP application interview, at which time she reported that she did not have any earned income. The application (D-4) shows that she reported that her employment with [REDACTED] ended on September 1, 2004. She signed the application form indicating she had reviewed or had read to her the information contained in this application form and that she understood the information. She further certified by her signature that she understood that it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits to which she is not entitled to receive. She certified that the statements contained on the application were true and correct. She signed the Rights and Responsibilities form (D-4) indicating further her understanding of her responsibilities to report accurate and truthful information and the penalties for failure to do so.
- 5) The Department presented additional evidence to show that the Defendant completed a SNAP application (D-5) on September 12, 2005, at which time she again reported that she had no earned income. She reported that her job with [REDACTED] ended on September 1, 2004. She signed the application indicating she understood her responsibility to report accurate and truthful information, as well as that she had reviewed the information contained in the application. She also signed the Rights and Responsibilities form (D-5) indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.
- 6) Additional evidence submitted (D-6) in the form of verification from [REDACTED] shows that the Defendant began employment with the company on April 29, 2004. The verification also shows that the Defendant was employed with the company during the months of October 2004 and September 2005, when she reported to the Department that she was no longer employed with the company. The evidence shows she received earnings from the company in October 2004 in the amount of four hundred seventy-seven dollars and sixty cents (\$477.60); she received one thousand four hundred forty dollars and fifty-two cents (\$1440.52) during September 2005.
- 7) Additional evidence submitted (D-7) shows the Defendant signed a sworn written statement on May 1, 2006, in which she stated, "I knew that not reporting my income was wrong and I may get caught." She also stated, "I was working for [REDACTED] when I was getting welfare benefits from the State of West Virginia. I am very sorry that I did this." Further, she stated, "I was not reporting my income at one time and I am very sorry. I am willing to pay back any benefits to which my family was not entitled to receive."
- 8) 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.

9) 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 [SNAP] Act of 1977, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of [SNAP].

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.

10) 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 [SNAP] Act, the SNAP Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits.

11) 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.

12) 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.

13) 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 IPV.
- 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 October 8, 2004 and September 12, 2005, which clearly informed her of these responsibilities.
- 4) The evidence is also clear in that the Defendant intentionally reported false information about her household income in order to receive SNAP. She reported during the October 8, 2004 and September 12, 2005 SNAP application interviews that she had no earned income, when in fact she was employed at [REDACTED] and receiving regular pay checks from the company. Additionally, the Defendant signed a sworn written statement admitting that she withheld the information, and that she knew withholding the information was “wrong”.
- 5) The Department was correct in its determination that the Defendant has committed an Intentional Program Violation by intentionally reporting false 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 July 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of June, 2011.

**Cheryl Henson
State Hearing Officer**