



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 29, 2012

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 22, 2012. 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 intentionally withheld information concerning your household income in order to receive SNAP benefits in which you were not entitled.

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, 2012 and will run consecutively 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.: 12-BOR-1013

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on May 22, 2012.

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-WVDHHR

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the State 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 Combined Application and Review Form with associated Rights and Responsibilities dated January 27, 2009
- D-2 Combined Application and Review Form with associated Rights and Responsibilities dated June 25, 2009
- D-3 Combined Application and Review Form with associated Rights and Responsibilities dated January 8, 2010
- D-4 Telephonic SNAP Recertification Form dated July 1, 2010
- D-5 Written Statement from Defendant's father dated March 8, 2011
- D-6 Combined Application and Review Form dated April 4, 2011
- D-7 Telephonic SNAP Recertification Form dated July 3, 2011
- D-8 New Hire Data Exchange printout last print dated February 24, 2012
- D-9 Computer printout of case comments
- D-10 Employment Information from [REDACTED] Inc.
- D-11 Written Statement from Defendant dated December 11, 2011
- D-12 Food Stamp Claim Determination
- D-13 Notification of Intent to Disqualify
- D-14 Hearing Request
- D-15 Waiver of Administrative Disqualification Hearing dated March 20, 2012
- D-16 West Virginia Income Maintenance Manual Chapter 1.2, 2.2, and 9.1
- D-17 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 2, 2012. 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 April 9, 2012, a Notice of Scheduled Hearing was issued to the Defendant, via first class mail delivery, to her address at -----, -----, West Virginia, -----. This notice scheduled the hearing for May 9, 2012, and was not returned by the United States Postal Service.
- 3) On April 16, 2012, the State Hearing Officer issued the Defendant notice rescheduling the hearing to May 22, 2012, at 10:30 A.M. This notice was issued, via first class mail delivery, to

her address at -----, -----, West Virginia, ----- and was not returned as undeliverable by the United States Postal Service.

- 4) The hearing convened as scheduled at 10:30 A.M., on the requested date, and 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 March 14, 2012, the Department issued the Defendant a Notification of Intent to Disqualify (Exhibit D-14), 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 [Defendant] intentionally violated the food stamp program by not reporting her earned inc [sic] on 8/15/11 FS review and claiming she did not get any money directly from -----, that he was paying the rent directly to LL [sic].

- 6) The Department contends that the Defendant provided false statements on SNAP applications and recertification interviews regarding her household's available income.
- 7) The Defendant completed an application for SNAP assistance (Exhibit D-1) on January 27, 2009. During the application process, the Defendant reported that her household consisted of herself and her daughter. Additionally, the Defendant reported that the child's father had relocated from the household on December 31, 2008, and that he agreed to pay the Defendant's rent and electric bill directly to her landlord and utility service provider.
- 8) The Defendant completed a recertification interview for SNAP assistance (Exhibit D-2) on June 25, 2009. The Defendant reported her income from the Hot Stepper and that the absent parent continued to pay her rent directly to her landlord.
- 9) The Defendant completed a reapplication interview for SNAP assistance and Low Income Energy Assistance (LIEAP) (Exhibit D-3) on January 8, 2010. The Defendant reported no change to her household circumstances and that the absent parent continued to pay her rent directly to her landlord.
- 10) The Defendant completed a reapplication interview for SNAP assistance (Exhibit D-4) on July 1, 2010. During the application process, the Defendant reported no employment income, but indicated that her father provided her a weekly allowance of \$100.00 (Exhibit D-5) and that the absent parent continued to pay her rent directly to her landlord.
- 11) The Defendant completed a recertification interview for SNAP assistance (Exhibit D-6) on April 4, 2011, and reported no change to her household circumstances.
- 12) The Defendant completed a telephonic recertification interview for SNAP assistance (Exhibit D-7) on August 15, 2011. The Defendant reported no change to her household circumstances

as she was still receiving her weekly allowance and the absent father of her child continued to pay her rent directly to her landlord. However, the Economic Service Worker (ESW) who completed the recertification interview with the Defendant received a new employment data exchange alert (Exhibit D-8) that indicated the Defendant began employment with [REDACTED] Inc. in April 2011. The ESW questioned the Defendant during the recertification interview and the Defendant reported that she never accepted this employment.

- 13) The Department's Quality Control (QC) Division attempted to complete a review of the Defendant's SNAP benefits, but the Defendant failed to comply with the request for review. A sanction was applied to the Defendant's SNAP assistance effective December 2011, because of the Defendant's non-cooperation (Exhibit D-9).
- 14) Lori Woodward, Repayment Investigator, testified that the Defendant eventually cooperated with QC review process. Ms. Woodward testified that during the review, QC determined that the Defendant had been employed with [REDACTED] Inc. (Exhibit D-10) since April 5, 2011, and that the Defendant failed to report this income. Additionally, the Defendant submitted a written statement (Exhibit D-11) to QC, which revealed that the absent father of her child provided rent monies of \$725.00 to her as "cash in hand" and not directly to the landlord.
- 15) Ms. Woodward provided a Food Stamp Claim Determination (Exhibit D-12) to demonstrate that by providing false information concerning her employment income and the unearned income from rent monies provided by the absent parent, an overpayment of SNAP benefits was issued to the Defendant in the amount of \$4214.00 for the months of January 2009, through November 2011.
- 16) The Defendant signed and completed the Rights and Responsibilities (Exhibit D-1-D-4 and Exhibit D-6-D-7) portion of each application and recertification and specifically acknowledged the following statements:

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. In addition, I will have to repay any benefits received for which I was not eligible.

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 information I have given is true and correct and I accept these responsibilities.

- 17) 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.

- 18) 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

19) 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.

20) Common Chapter Manual 740.22 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, 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 specify 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 IPV.
- 3) Evidence reveals that the Defendant withheld or provided false and misleading information about income available to her household on several occasions in order to receive SNAP benefits to which she was not legally entitled. By the Defendant's own admission during a QC review, she reported that the absent father of her child provided her with rent monies and did not provide these monies directly to the landlord; therefore, this income should have been considered unearned income and attributed to the Defendant's SNAP calculation. Evidence is clear that the Defendant failed to report this income during numerous applications and recertification interviews for SNAP assistance. The Defendant's failure to disclose her receipt of this income establishes intent.
- 4) Evidence is clear that the Defendant commenced employment with [REDACTED] Inc. on April 5, 2011, and received consistent income from employment from May 2011, through October 2011. The Defendant was directly questioned about this income during her August 2011, recertification for SNAP assistance and Defendant indicated that she did not accept this employment. The Defendant's failure to provide this information concerning her employment income establishes intent.
- 5) The false information provided by the Defendant at her SNAP applications and recertifications interviews concerning her earned and unearned income resulted in an overpayment of SNAP benefits of which the Defendant was ineligible to receive.
- 6) In accordance with SNAP policy and regulations, an IPV has been committed and a disqualification penalty must be applied. The disqualification penalty for a first offense is one (1) year.
- 7) The Defendant is the only assistance group member subject to said disqualification penalty. The one year disqualification penalty will begin July 1, 2012 and will run consecutively 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 penalty 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, 2012.

Eric L. Phillips
State Hearing Officer