



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

July 13, 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 June 7, 2012, for the purpose of determining whether an Intentional Program Violation (IPV) was committed by you.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and 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.

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 (SNAP) Act, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. [WV Income Maintenance Manual Section 20.2,C,2 and 7 CFR Section 273.16 (c)]

Information submitted at the hearing reveals that you intentionally provided false and misleading information about your household income in order to receive SNAP benefits for which you were not entitled.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. Your disqualification from SNAP will begin effective August 1, 2012.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Jennifer Butcher, Repayment Investigator

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

-----,

Defendant,

v.

ACTION NO.: 12-BOR-1089

**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. The hearing was convened via videoconference on June 7, 2012, with Department's Representative appearing at the ----- County Office of the WV Department of Health and Human Resources (DHHR) in -----, WV, and the Hearings Officer appearing at the ----- County Office of the DHHR in -----, WV.

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:

Jennifer Butcher, Repayment Investigator, Department's Representative

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

The Hearing Examiner placed participant under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in SNAP.

V. APPLICABLE POLICY:

7 CFR §273.16 Code of Federal Regulations

Common Chapters Manual, Chapter 700

West Virginia Income Maintenance Manual: Chapter 1.2, Chapter 2.2.B, Chapter 9.1.A, Chapter 20.2, Chapter 20.6.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- M-1 BVRF Screen print from RAPIDS System showing referral for recoupment.
- M-2 Copy of Income Maintenance Manual Chapter 1.2.E showing customer responsibility for providing accurate information.
- M-3 Copy of the Code of Federal Regulations (CFR) §273.16 showing disqualifications for Intentional Program Violations.
- M-4 Copy of Combined Application and Rights and Responsibilities forms dated and signed by Defendant on September 21, 2011.
- M-5 Income Verification Request from the Investigations and Fraud Management (IFM) unit to employer of Defendant's boyfriend, and an attached copy of employment and income verification from -----, WV, dated January 30, 2012.
- M-6 Copy of Income Maintenance Manual Chapter 2.2.B showing SNAP case change reporting requirements.
- M-7 ES-FS-5, SNAP Claim Determination sheet.
- M-8 Copy of Income Maintenance Manual Chapter 20.6.A showing definitions of Welfare Fraud.
- M-9 Copy of IFM-BR-44 Waiver of Administrative Disqualification Hearing form and IFM-BR-44a Notice of Intent to Disqualify form, sent to Defendant on February 13, 2012.
- M-10 Copy of Income Maintenance Manual Chapter 20.2.C.2, defining SNAP Intentional Program Violation (IPV) claims and penalties.
- M-11 Copy of Income Maintenance Manual Chapter 20.2.E, showing SNAP claim collection and repayment procedures.
- M-12 Copy of Income Maintenance Manual Chapter 20.2.F.2a, showing SNAP withholding amounts to recoup overpayments.

VII. FINDINGS OF FACT:

- 1) The Department is alleging an act of IPV in the Defendant's SNAP case because she allegedly failed to report that her boyfriend was working full-time and that the boyfriend received earned income from August 2011 to October 2011.

- 2) Defendant was mailed notice of the Administrative Disqualification Hearing on May 7, 2012, by first class mail. The notice was sent to -----, WV. This is the address at which Defendant receives her public assistance benefits.
- 3) The hearing was scheduled for 11:00 a.m. on June 7, 2012, and as of 11:15 a.m., the Defendant failed to appear. As set forth in regulations (7 CFR §273.16(e) (4)), and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, 740.20), the hearing convened at 11:15 a.m., and was conducted without the Defendant in attendance.
- 4) On February 13, 2012, the Investigation and Fraud Management (IFM) Unit of the WV DHHR received notice from an Economic Service Worker in the ----- County office of the WV DHHR, alleging that the Defendant's boyfriend had been working and receiving earned income after reporting during a SNAP benefit application that he was unemployed. (Exhibit M-1.)
- 5) On September 21, 2011, Defendant and her boyfriend applied for SNAP benefits at the --- County office of the WV DHHR. (Exhibit M-4.) During the application, she reported that her SNAP assistance group (AG) consisted of herself, her boyfriend, their child and the Defendant's other child, and that there was no income in the household. The worker's recordings (Exhibit M-4, page 25) indicate that Defendant reported moving into the home of the boyfriend's father and that they reported his father charged the AG no shelter or utility costs. A letter from the boyfriend's father (Exhibit M-4, page 13) confirmed this information. During the application interview, Defendant signed and dated a DFA-RFA-1, a Combined Application Form (CAF) which contained information she had given the worker during the interview (Exhibit M-4, page 1) and a DFA-RR-1, a Rights and Responsibilities form. (Exhibit M-4, page 15.) The CAF signature page states,

I understand my responsibility to provide complete and truthful information. I have reviewed or had read to me the information contained in this automated portion of the application form and I understand the information. I understand 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 I am not by law entitled. Under penalty of perjury, I certify that the statements are true and correct.

The DFA-RR-1, Rights and Responsibilities form is a list of applicants' rights and responsibilities for each program for which an applicant applies. The applicant signifies that he or she is aware of each right or responsibility by checking "Yes" or "No" at each item. Under the SNAP Program section of the form, item #4 states,

I understand if I am found (by court action or 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.

Defendant has marked “Yes” at this item.

- 6) Worker’s recordings (Exhibit M-4, page 25) report that a DHHR eligibility worker received an inter-agency communiqué indicating Defendant’s boyfriend had earned income which he had not reported to the Department.
- 7) Department’s Representative, the IFM worker who conducted this investigation, stated that she sent an Income and Employment Verification form to the boyfriend’s employer, -----, WV, on January 13, 2012. (Exhibit M-5.) She stated that the employer completed and signed the verification form on January 30, 2012, and returned it to her shortly thereafter. On the verification form, the employer reported that the boyfriend worked for -----from August 15, 2011, to October 8, 2011, and in that period of time received gross earnings in the amount of \$7,726.
- 8) The Code of Federal Regulations, 7 CFR §273.16(c) (Exhibit M-3), defines an Intentional Program Violation (IPV) as:

(c) Definition of intentional Program violation. 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, 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).

- 9) The West Virginia Income Maintenance Manual, Chapter 1.2.E (Exhibit M-2), 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 . . . The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions: denial of the application; closure of the active AG [assistance group]; removal of the individual from the AG; repayment of benefits; reduction in benefits.

- 10) The West Virginia Income Maintenance Manual, Chapter 9.1.A.2.h, states:

h. 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

11) The West Virginia Income Maintenance Manual, Chapter 20.2 (Exhibit M-10), states:

IPVs include making false or misleading statements, 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.

12) The West Virginia Income Maintenance Manual, Chapter 20.6.A (Exhibit M-8), states:

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false. . . . [I]t is not essential that an affirmative representation be made. Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false.

VIII. CONCLUSIONS OF LAW:

The Department has established that the Defendant intentionally failed to report that her boyfriend was working full-time and receiving earned income when she applied for SNAP benefits on September 21, 2011. She signed a CAF and a Rights and Responsibilities Form indicating that she was aware of her responsibility to provide complete and accurate information and of the penalties for not doing so.

IX. DECISION:

Withholding information concerning earned income during a SNAP application is a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Agency's proposal to apply a SNAP disqualification is **upheld**. The Defendant will be disqualified from participation in SNAP for a period of twelve (12) months to begin effective August 1, 2012.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th Day of July, 2012.

Stephen M. Baisden
State Hearing Officer