



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 E. Third Avenue  
Williamson, WV 25661**

**Earl Ray Tomblin  
Governor**

**Rocco S. Fucillo  
Cabinet Secretary**

October 31, 2012

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Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification Hearing held on September 24, 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 intentionally having 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 Section 20.2.C.2 and 7 CFR Section 273.16 (c)]

Information submitted at the hearing reveals that you intentionally obtained and used SNAP benefits from North Carolina at the same time that you received SNAP benefits from West Virginia.

It is the decision of the State Hearing Officer that an IPV was committed by you and a disqualification penalty of ten (10) years will be applied. Your disqualification from SNAP will begin effective December 1, 2012.

Sincerely,

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

cc: Erika Young, Chairman, Board of Review  
Brian Shreve, Repayment Investigator

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

**IN RE: ----,**

**Defendant,**

**v.**

**ACTION NO.: 12-BOR-1749**

**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 on September 24, 2012, at the [REDACTED] County office of the WV Department of Health and Human Resources (DHHR) in [REDACTED] 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:**

-----, Defendant  
----, Defendant's Witness

Brian Shreve, Repayment Investigator, Department's Representative.

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

The Hearing Officer placed participants 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 8.6, Chapter 20.2 and Chapter 20.6

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- M-1 Copy of the Code of Federal Regulations (7 CFR §273.16) showing disqualifications for Intentional Program Violations
- M-2 BVRF Screen print from RAPIDS System showing referral for recoupment
- M-3 ES-FS-5, SNAP Claim Determination sheet
- M-4 Case recordings from Defendant's SNAP case record, dated April 25, 2012
- M-5 Transaction history from Defendant's West Virginia Electronic Benefits Transfer (EBT) account from October 4, 2011, to May 4, 2012
- M-6 Fax from ----, [REDACTED] Department of Social Services, with Defendant's [REDACTED] EBT transaction history
- M-7 Copy of Combined Application Form and Rights and Responsibilities Form dated and signed by Defendant on September 26, 2011
- M-8 Case recordings from Defendant's SNAP case record, dated April 25, 2012
- M-9 Copy of Income Maintenance Manual, Chapter 8.6, showing that an individual may not receive SNAP, TANF or Medicaid benefits concurrently in more than one county in West Virginia or in more than one state at the same time
- M-10 Copy of Income Maintenance Manual, Chapter 20.2, showing SNAP benefit claims and repayment procedures
- M-11 Copy of Income Maintenance Manual, Chapter 20.6.A, describing the definition of welfare fraud
- M-12 Copy of IG-BR-44, Waiver of Administrative Disqualification Hearing form, IG-BR-44a, Notification of Intent to Disqualify form, and IFM-1-7d, Investigation Interview Appointment form, sent to Defendant on May 16, 2012, and June 18, 2012
- M-13 [REDACTED] Department of Health and Human Services' Application for Food and Nutrition Services form, signed by Defendant on March 2, 2011

M-14 Transaction history from Defendant's [REDACTED] Electronic Benefits Transfer (EBT) account for May 14, 2012

## **VII. FINDINGS OF FACT:**

- 1) The Department is alleging an act of IPV in the Defendant's SNAP case because she allegedly applied for, received and used SNAP benefits simultaneously from the states of West Virginia and [REDACTED]
- 2) Department's Representative, a Repayment Investigator for the Investigations and Fraud Management (IFM) unit of the WV DHHR, stated that he received a benefit recovery referral (Exhibit M-2) from a DHHR eligibility worker in the [REDACTED] County, WV, office which indicated Defendant was active for SNAP benefits in [REDACTED] when she applied for SNAP in WV in September 2011. He submitted into evidence a print-out from Defendant's WV EBT transaction history (Exhibit M-5) indicating she used her WV EBT card during the months of November and December 2011. He submitted into evidence a document from the [REDACTED] Department of Social Services (Exhibit M-6) verifying that Defendant received SNAP benefits in that state from March 2011 to May 2012, and verifying that Defendant used her [REDACTED] EBT card for point-of-sale purchases in November and December 2011. He submitted a second document from the [REDACTED] Department of Social Services (Exhibit M-14) indicating the transactions from November and December 2011 were made in the state of WV.
- 3) Department's Representative stated that Defendant was aware of the penalties for fraudulently using SNAP benefits from multiple states at the same time. He submitted into evidence a Common Application Form (CAF) and a Rights and Responsibilities Form (Exhibit M-7) Defendant had signed on September 26, 2011, when she applied for SNAP benefits after returning to WV. 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 Rights and Responsibilities Form, DFA-RR-1, is a list of applicants' rights and responsibilities for each program for which he or she 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 #3 states:

I understand that if I or any member of my household . . . makes a false statement or misrepresentation of identity and/or residence to receive duplicate benefits at the same time, the responsible party will be disqualified from the SNAP Program for 10 years.

Also on the same document, item #48 states:

I 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 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.

Defendant marked “Yes” at both of these items.

- 4) Department Representative stated that Defendant demonstrated her intent to make a willful misrepresentation in a statement she made to the worker who took her application on September 26, 2011. He submitted into evidence a case recording made by the worker that day which states in pertinent part, “She can’t remember what [county] she lived in [REDACTED] and states no benefits in [REDACTED] as her daughter-in-law closed SNAP in [REDACTED]. . . .” Department’s Representative pointed out that Defendant used her [REDACTED] EBT card in WV many times after this date.
- 5) The Code of Federal Regulations, 7 CFR §273.16(c) (Exhibit M-1), defines an Intentional Program Violation (IPV) as follows:
  - (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 [SNAP] 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).
- 6) The West Virginia Income Maintenance Manual, Chapter 8.6 (Exhibit M-9), states:

A client may not receive SNAP benefits, WV WORKS or Medicaid concurrently in more than one county in West Virginia or more than one state. In addition, he may not receive different types of benefits in more than one county or state at the same time . . . The possibility of intentional misrepresentation must be explored when it is discovered that the client is receiving benefits of any type in more than one county at the same time.

7) The West Virginia Income Maintenance Manual, Chapter 20.2.C.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 [SNAP] regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits.

8) The West Virginia Income Maintenance Manual, Chapter 20.6.A (Exhibit M-11), 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. It is an essential element in a misrepresentation charge that the client knew his statement was false. The misrepresentation must be of an existing fact and cannot be said to be willfully false if it is merely an expression of opinion. Likewise, it 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 provided evidence that the Defendant intentionally used SNAP benefits from the states of West Virginia and [REDACTED] simultaneously during the months of November and December 2011. The Department has provided evidence that the Defendant intended to do this in the fact that she told a WV DHHR worker during her WV SNAP application her SNAP benefits in [REDACTED] were closed, then subsequently used her NC EBT card in West Virginia. After reviewing the details of the case recordings and her EBT transactions from both states, I find the evidence to be clear and convincing that Defendant committed an Intentional Program Violation by doing this.

#### **IX. DECISION:**

Using SNAP benefits from two separate states simultaneously 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 ten (10) years effective December 1, 2012.

#### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 31<sup>st</sup> Day of October, 2012.**

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**Stephen M. Baisden  
State Hearing Officer**