

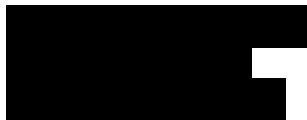


STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 11, 2016



RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1515

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

Encl: Defendant's Recourse to Hearing Decision
Form IG-BR-29

cc: Ellis Bryson, [REDACTED] County DHHR

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

████████████████████,

Defendant,

v.

Action Number: 16-BOR-1515

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Movant.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from an Administrative Disqualification Hearing for ██████████ requested by the Movant on March 15, 2016. 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 and Federal Regulations at 7 CFR §273.16. The hearing was convened on April 26, 2016.

The matter before the Hearing Officer arises from a request by the Department for a determination as to whether the Defendant has committed an Intentional Program Violation and should thus be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months.

At the hearing, the Movant appeared by Ellis Bryson, Criminal Investigator. The Movant's representative was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

M-1 Hearing Summary

M-2 Combined Application and Review Form and Rights and Responsibilities form dated August 2, 2011

M-3 SNAP Review Form signed January 20, 2012 and Case Comments from January 2012-February 2012

M-4 Order from the Circuit Court of ██████████ County, West Virginia dated April 2, 2009

M-5 Suspect Interview Appointment Letter dated March 3, 2016

M-6 Advance Notice of Administrative Disqualification Hearing Waiver dated March 3, 2016

M-7 Waiver of Administrative Disqualification Hearing (unsigned)
M-8 West Virginia Income Maintenance Manual §9.1 (excerpt)
M-9 Code of Federal Regulations Title 7 §273.16

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Department alleged that the Defendant committed an Intentional Program Violation by withholding information regarding her drug felony conviction.
- 2) The Defendant was notified of the hearing by scheduling order sent on March 24, 2016. The Defendant failed to appear for the hearing or provide good cause for her failure to do so. In accordance to 7 CFR §273.16(e) (4)) and West Virginia Department of Health and Human Resources' Common Chapters Manual, §740.20, the hearing was held without the Defendant in attendance.
- 3) The Defendant applied for SNAP benefits on August 2, 2011. The Defendant signed the Combined Application and Review Form (M-2) attesting that no one in her household had been convicted of a drug felony for possession, use or distribution of a controlled substance on or after August 23, 1996.
- 4) The Defendant completed a SNAP review form (M-3) on January 20, 2012. The Defendant left the section of the form blank regarding felony drug convictions for household members.
- 5) The Department submitted an Order from the [REDACTED] County, West Virginia Circuit Court (M-4) dated April 2, 2009, documenting the Defendant's convictions for Obtaining a Schedule II Controlled Substance and Obtaining a Schedule III Controlled Substance.
- 6) The Department contended that the Defendant provided false information regarding her status as a convicted drug felon at her SNAP application and review. The result of the false representation was an overpayment of SNAP benefits of \$4,167 issued from August 2011 through May 2012 to the Defendant for which she was not eligible.

APPLICABLE POLICY

Code of Federal Regulations 7 CFR §273.16, establishes that an individual making a false or misleading statement, or misrepresenting, concealing or withholding facts, violating the Food Stamp Program, or any State statute for the purpose of acquiring, receiving, possessing or

trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system has committed an Intentional Program Violation (IPV).

West Virginia Income Maintenance Manual §20.C.2 defines an IPV and establishes that IPV's include: making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. Once an IPV has been established, a disqualification period must be imposed on the Assistance Group (AG) member who committed the violation. Furthermore, IPV claims must be established for trafficking-related offenses. Claims arising from trafficking-related offenses are the value of the trafficking benefits as determined by the individual's admission, adjudication, or documentation that forms the basis of the trafficking determination.

West Virginia Income Maintenance Manual §9.1A(2)h sets forth the penalties for individuals found guilty of an IPV as follows: First Offense, twelve (12) month disqualification; Second Offense, twenty-four (24) month disqualification; Third Offense, permanent disqualification.

West Virginia Income Maintenance Manual §9.1A(2)g states that individuals convicted of a felony offense which occurred after August 22, 1996, which involved possession, use or distribution of a controlled substance as defined by section 802 (6) of the Controlled Substance Act are permanently disqualified from participation in SNAP and may not be a separate AG.

DISCUSSION

Individuals found guilty of a felony drug offense are permanently disqualified from participation in SNAP. The Defendant was convicted of two (2) counts of obtaining a controlled substance in April 2009. The Defendant was not eligible to receive SNAP benefits for herself when she applied in August 2011.

The Defendant gave false information at her August 2011 SNAP application and January 2012 SNAP review by reporting that no one in her household had been convicted of a drug felony offense. The Defendant's actions meet the definition of an Intentional Program Violation.

CONCLUSIONS OF LAW

The Department provided clear and convincing evidence that the Defendant made false statements in order to receive SNAP benefits that she was not entitled to receive and therefore her actions meet the definition of an Intentional Program Violation.

DECISION

It is the finding of the State Hearing Officer that the Defendant committed an Intentional Program Violation. Under the law, the Defendant is already permanently disqualified from

SNAP due to her status as a convicted drug felon, therefore the 12 month disqualification will be served concurrently beginning June 2016 through May 2017, at which time the Defendant will not resume eligibility due to her drug felony conviction.

ENTERED this 11th day of May 2016

Kristi Logan
State Hearing Officer