



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

December 14, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WVDHHR

ACTION NO.: 16-BOR-2776

Dear [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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Elizabeth Mullins, Department Representative

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

██████████,

Defendant,

v.

Action Number: 16-BOR-2776

**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 September 30, 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 November 17, 2016.

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

At the hearing, the Movant appeared by Elizabeth Mullins. The Defendant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- | | |
|-----|--|
| D-1 | Code of Federal Regulations, 7 CFR §273.16 |
| D-2 | SNAP Claim Determination form and supporting documentation |
| D-3 | Excerpt of a SNAP review form, signed April 25, 2015 |
| D-4 | Screen print of quarterly wage match data for the Defendant; Screen prints of data exchange information regarding date of hire details for the Defendant's employers |
| D-5 | SNAP review form, signed December 9, 2015 |
| D-6 | West Virginia Income Maintenance Manual (WVIMM), §1.2 (excerpt) |
| D-7 | WVIMM, §20.2 |
| D-8 | WVIMM, §20.6 (excerpt) |
| D-9 | Administrative Disqualification Hearing documents |

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 Defendant was a recipient of SNAP benefits.
- 2) The Defendant was hired by [REDACTED] on April 28, 2015. (Exhibit D-4)
- 3) The Movant presented an incomplete SNAP review document signed by the Defendant on April 25, 2015. (Exhibit D-3)
- 4) The Defendant continued to receive income from employment at [REDACTED] during the fourth quarter of 2015. (Exhibit D-4)
- 5) The Defendant completed a SNAP review in December 2015.
- 6) The Defendant testified she reported her employment during this review.
- 7) The Defendant signed the form from this review (Exhibit D-5) on December 9, 2015, certifying that the statements on that document “are true and correct.”
- 8) This review form (Exhibit D-5) does not include a question or statement regarding employment or earned income.
- 9) The Movant contended the actions of the Defendant constitute an Intentional Program Violation (IPV), and requested this hearing for the purpose of making that determination.

APPLICABLE POLICY

The Code of Federal Regulations, 7 CFR §273.16(c) defines an IPV as having intentionally “concealed or withheld facts” for purposes of SNAP eligibility.

The West Virginia Income Maintenance Manual (WVIMM), §9.1.A.2.h, indicates a first offense IPV results in a one year disqualification from SNAP.

The WVIMM, §2.2.B, specifies reporting requirements for a SNAP assistance group (AG) and reads, in part, “All SNAP AGs must report changes related to eligibility and benefit amount at application and redetermination.”

DISCUSSION

The Movant requested this hearing to determine if the Defendant committed an intentional violation of SNAP regulations and the appropriate penalty, if any. The Movant's burden is to prove this by clear and convincing evidence and testimony.

The basis for the Movant's assertion that the Defendant committed an IPV is the onset of earned income. SNAP assistance groups are required to report this information at application, review or in the interim if the income is sufficient as defined by policy. The Movant's contention was that the Defendant was required to report income at two SNAP reviews – in April 2015 and in December 2015 – and that this constitutes an IPV. The Movant did not present convincing evidence to support this.

The Movant submitted an incomplete review document signed by the Defendant in April 2015. The document appears to be missing only one page, which is problematic, but the date of this review is the element that renders it irrelevant in establishing it as a false statement by the Defendant. The review was signed on April 25, 2015, and the Movant verified the Defendant's date of hire as April 28, 2015. Even if the complete form had been submitted as evidence, this would not demonstrate that the Defendant made a false statement with regard to employment because her employment had not started at the time of review.

The Movant did not provide detailed employment verification, but the quarterly wage match report for the Defendant – with wages from the same employer for the third and fourth quarter of 2015, as well as the first quarter of 2016 – indicates that it was likely the Defendant was receiving regular wages from this employer at the time of her December 2015 SNAP review.

The Defendant testified that she reported her employment at this review. Ordinarily, the printed review document settles any dispute of what was discussed during a review. The document lists the eligibility factors reported, the questions asked and the responses provided. The applicant's or recipient's signature on this document certifies these statements as true and correct. However, there is nothing on the Defendant's December 2015 review document that lists any employment or earned income questions. Although the worker for the Movant should have asked the Defendant about employment and earned income during this SNAP review, the review document does not establish that it was.

Given the Defendant's testimony and the absence of a false statement on her part, there is insufficient evidence that the Defendant committed an intentional violation of SNAP regulations.

CONCLUSION OF LAW

Because the Movant failed to provide clear and convincing testimony and evidence that the Defendant committed an act that meets the codified IPV definition, the Movant must not apply the corresponding SNAP disqualification penalty.

DECISION

It is the finding of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation.

ENTERED this ____Day of December 2016.

**Todd Thornton
State Hearing Officer**