



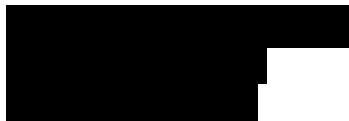
**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

Bill J. Crouch
Cabinet Secretary

**BOARD OF REVIEW
Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326**

M. Katherine Lawson
Inspector General

August 7, 2018



RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-1686

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,

Tara B. Thompson
State Hearing Officer
Member, State Board of Review

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

cc: Wanda Morgan, Investigations and Fraud Management

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

[REDACTED],

Defendant,

v.

Action Number: 18-BOR-1686

**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 [REDACTED] requested by the Movant on May 10, 2018. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual and Federal Regulations at 7 CFR §273.16. The hearing was convened on July 17, 2018.

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 (IPV) and should thus be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months.

At the hearing, the Department appeared by Wanda Morgan, Investigations and Fraud Management. The Defendant failed to appear. The witness was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 DHHR Application, received February 23, 2015
- M-2 eRAPIDS Case Comments, dated February 24, 2014 through August 17, 2015
- M-3 DHHR Combined Application and Review Form, signed August 7, 2015
- M-4 DHHR Rights and Responsibilities, signed August 7, 2015
- M-5 eRAPIDS Case Comments, dated December 30, 2015 through January 27, 2016
- M-6 DHHR PRC2 Form, signed December 29, 2017
- M-7 DHHR SNAP Application, signed April 12, 2016
- M-8 eRAPIDS Case Comments, dated January 27, 2016 through April 26, 2016
- M-9 DHHR Combined Application and Review Form, dated April 26, 2016
- M-10 eRAPIDS Case Comments, dated June 10, 2016 through July 7, 2017

- M-11 DHHR SNAP Review, signed June 19, 2016
- M-12 DHHR Rights and Responsibilities, dated April 26, 2016
- M-13 DHHR Rights and Responsibilities, signed July 7, 2017
- M-14 eRAPIDS SNAP Budgets, dated August 7, 2015; September 1, 2015; October 1, 2015; November 1, 2015; February 1, 2016; March 1, 2016; April 1, 2016; June 1, 2016; July 1, 2016; August 1, 2016; July 7, 2017; August 1, 2017; and September 1, 2017
- M-15 Benefit Recovery Referral, dated August 22, 2017
- M-16 DHHR Appointment Letter, dated April 20, 2018
- M-17 Administrative Disqualification Hearing (ADH) Summary
- M-18 West Virginia Income Maintenance Manual §3.2.1.A.6 through §3.2.1.B.3
- M-19 United States District Court Criminal Case Judgement, signed September 23, 2013
- M-20 Northern District of West Virginia Criminal Docket
- M-21 eRAPIDS Case Comments, dated August 7, 2017 through March 31, 2018
- M-22 eRAPIDS Case Summary, printed January 26, 2018
- M-23 eRAPIDS Case Benefit Summary Benefit Issuances, dated August 9, 2008 through September 1, 2017

Defendant's Exhibits:

None

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 from August 2015 through August 2016 and from July 2017 through September 2017. (Exhibits M-14, M-15, and M-23)
- 2) On August 22, 2017 and January 26, 2018, referrals were made to Investigations and Fraud Management (IFM) alleging that the Defendant was convicted of a drug felony and had received SNAP benefits which she was ineligible to receive. (Exhibit M-15)
- 3) On September 23, 2013, a United States District Court Judgement was signed adjudicating the Defendant as guilty for felony charges of Aiding and Abetting the Distribution of Oxycodone Near a Protected Location. (Exhibits M-19 and M-20)
- 4) The Defendant completed and signed applications for SNAP benefits on August 7, 2015, December 29, 2015, April 12, 2016, June 19, 2016, which acknowledged her responsibility to provide complete and truthful information. (Exhibits M-3, M-6, M-7, M-9, and M-11)
- 5) On the Appellant's applications, the Defendant reported that no household member had been convicted of a drug felony. (Exhibits M-3, M-6, M-7, M-9, and M-11)

- 6) On the dates of application and on April 26, 2016, and July 7, 2017, the Defendant signed Rights and Responsibilities acknowledging understanding that any household member convicted of a drug felony charge was permanently disqualified from participation in the SNAP program and acknowledging understanding that if found to have committed an intentional program violation, the member would be subject to disqualification. (Exhibits M-4, M-7, and M-11 through M-13)
- 7) The Defendant completed application interviews on August 7, 2015, April 26, 2016, August 1, 2016, July 7, 2017 and did not report that any household member was convicted of a drug felony. (Exhibits M-2, M-8, and M-20)
- 8) The Defendant had no previous history of IPV penalty determination.

APPLICABLE POLICY

Code of Federal Regulations (January 2018) 7 CFR §273.16(a)(1) provides in part:

Administrative disqualification procedures or referral for prosecution action should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional Program violation as defined in paragraph (c) of this section.

Code of Federal Regulations (January 2018) 7 CFR §273.16(b)(1)(i) provides in part:

Individuals found to have committed an intentional Program violation through an administrative disqualification hearing ... shall be ineligible to participate in the Supplemental Nutrition Assistance Program (SNAP) for a period of twelve months for the first intentional Program violation.

Code of Federal Regulations (January 2018) 7 CFR §273.16(b)(13) provides in part:

The disqualification period shall begin no later than the second month which follows the date the individual receives written notice of the disqualification. The disqualification period must continue uninterrupted until completed regardless of the eligibility of the disqualified individual's household.

Code of Federal Regulations (January 2018) 7 CFR §273.16(c)(1) provides in part:

Intentional program violations shall consist of having intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts.

Code of Federal Regulations (January 2018) 7 CFR §273.16(e)(4) provides in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence

West Virginia Income Maintenance Manual (WVIMM) §1.2.4 Client Responsibility provides in part:

The client's responsibility is to provide complete and accurate information about her circumstances so that the Worker is able to make a correct determination about her eligibility.

IMM §3.2.1. B.3 Individuals Excluded by Law provides in part:

Individuals are permanently excluded from participation in Supplemental Nutrition Assistance Program (SNAP) benefits if:

The individual was convicted of a felony offense that occurred after August 22, 1996 involving a controlled substance [when] the offense involved an element of the possession, use or distribution of a controlled substance as defined by Section 802 (6) of the Controlled Substance Act. This does not include convictions which have since been expunged or reduced to lesser convictions part of a criminal offense reduction program.

DISCUSSION

The Movant investigated the Defendant's receipt of SNAP benefits from August 2015 through August 2016 and from July 2017 through September 2017. The Movant petitioned the Board of Review for an Administrative Disqualification Hearing (ADH) and requested the Defendant be disqualified from SNAP benefits for a 12-month penalty period for withholding information regarding her 2013 felony drug conviction. The Defendant was notified of the ADH and failed to appear. Pursuant to federal regulations, the hearing was held in the Defendant's absence.

The Movant had to prove that the Defendant made false or misleading statements, or misrepresented, concealed or withheld facts to obtain SNAP benefits. A United States District Court Judgement verified that the Defendant was convicted in 2013 of felony Aiding and Abetting the Distribution of Oxycodone Near a Protected Location. Pursuant to policy, individuals who have been convicted of a drug felony are permanently disqualified from receiving SNAP benefits.

Evidence revealed that the Defendant denied that she had been convicted of a drug felony on her applications and during eligibility interviews for SNAP benefits. The Defendant's signatures on the SNAP benefit applications and Rights and Responsibility documents clearly demonstrate that

she had the opportunity to review the content of her applications, marked she had understood that individuals convicted of a drug felony were disqualified from receiving SNAP benefits and that if an individual was found to have committed an IPV, a disqualification penalty would be applied.

The evidence verifies that the Defendant committed an act of IPV to obtain SNAP benefits by concealing or withholding facts regarding her 2013 felony drug conviction. Because the Defendant had no previous history of IPV disqualification penalty, a first offense disqualification penalty should be imposed.

CONCLUSIONS OF LAW

- 1) The Defendant had a 2013 felony conviction for Aiding and Abetting the Distribution of Oxycodone Near a Protected Location and by policy is permanently excluded from participation in SNAP.
- 2) The Defendant committed an IPV by intentionally concealing or withholding facts regarding her 2013 felony drug conviction to obtain SNAP benefits.
- 3) The Defendant had no previous history of IPV disqualification penalty; therefore, a first offense 12-month disqualification penalty period should be imposed.

DECISION

It is the finding of the State Hearing Officer that the Defendant committed an Intentional Program Violation. Pursuant to policy, the Defendant is permanently disqualified from participation in SNAP; therefore, the Defendant's first offense 12-month disqualification penalty period will be served concurrently, beginning September 1, 2018.

ENTERED this 7th day of August 2018.

Tara B. Thompson
State Hearing Officer