



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661**

**Bill J. Crouch
Cabinet Secretary**

**Jolynn Marra
Interim Inspector General**

October 1, 2018



RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-1960

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,

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

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

cc: Brian Shreve, Repayment Investigator

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

██████████,

Defendant,

v.

Action Number: 18-BOR-1960

**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 July 3, 2018. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (WV DHHR) Common Chapters Manual and Federal Regulations at 7 CFR §273.16. The hearing was convened on September 18, 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 and thus should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for twelve months.

At the hearing, the Department appeared by Brian Shreve, Repayment Investigator. The Defendant did not appear. The participant was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Code of Federal Regulations 7 CFR §273.16
- M-2 Benefit Recovery Referral dated May 10, 2018, with Case Comments from Defendant's SNAP case record attached
- M-3 Form ES-FS-5, Food Stamp (now SNAP) Claim Determination
- M-4 Order on Petition for Modification from the Family Court of ██████████ County, WV, dated May 3, 2018
- M-5 WV DHHR Application for Low-Income Energy Assistance Program (LIEAP), signed and dated by the Defendant on December 15, 2016
- M-6 SNAP Six- and Twelve-Month Contact Form, signed and dated by the Defendant on February 17, 2017
- M-7 WV DHHR Application for Low-Income Energy Assistance Program (LIEAP), signed and dated by the Defendant on November 17, 2017

- M-8 SNAP Six- and Twelve-Month Contact Form, signed and dated by the Defendant on January 24, 2018
- M-9 West Virginia Income Maintenance Manual (WV IMM) Chapter 1, §1.2.4
- M-10 WV IMM Chapter 11, §11.2
- M-11 Copy of IG-IFM-ADH-waiver, Waiver of Administrative Disqualification Hearing form, and IG-IFM-ADH-Ltr, Notice of Intent to Disqualify form, sent to Defendant on June 19, 2018

Defendant's Exhibits

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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's representative contended the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for one year because she did not report on LIEAP applications and SNAP periodic reviews that her two children were not living in her home.
- 2) The Defendant has been a SNAP recipient since March 2005.
- 3) The Defendant was divorced from her husband and had custody of her two children, for whom she received SNAP benefits.
- 4) The Defendant's children began living with their father in October 2016 (Exhibit M-4).
- 5) Since October 2016, the Defendant has completed two LIEAP applications (Exhibits M-5 and M-7) and two SNAP Six- and Twelve-Month Contact Forms (Exhibits M-6 and M-8). On these forms, the Defendant reported that her two children resided in her home.
- 6) The Department's representative asserted that because the Defendant did not report her household composition correctly on the two LIEAP applications (Exhibits M-5 and M-7) and two SNAP Six- and Twelve-Month Contact Forms (Exhibits M-6 and M-8), her SNAP AG received \$5,200 in benefits to which it was not entitled.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) Chapter 1, §1.2.4 reads as follows: "The client's responsibility is to provide complete and accurate information about his [or her] circumstances so that the Worker is able to make a correct determination about his [or her] eligibility."

WV IMM, Chapter 11, §11.2 reads as follows in part, “When an assistance group (AG) has been issued more Supplemental Nutrition Assistance Program (SNAP) benefits than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the SNAP entitlement of the AG and the SNAP allotment the AG was entitled to receive.”

WV IMM, Chapter 11, §11.2.3.B reads as follows in part: “IPVs include making false or misleading statements, misrepresenting facts, 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. The client(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.”

WV IMM Chapter 3, §3.2.1.B.5 provides that once an IPV is established, a disqualification penalty is imposed on the AG members who committed the IPV. The penalties are as follows: First Offense – one-year disqualification; Second Offense – two-year disqualification; Third Offense – permanent disqualification.

Pursuant to the Code of Federal Regulations 7 CFR §273.16, an Intentional Program Violation shall consist of a SNAP recipient 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 or access device.

DISCUSSION

The Defendant had been a SNAP recipient since March 2005. From December 2016 through January 2018, she received SNAP benefits for herself and her two children. In May 2018, a worker in the WV Bureau for Child Support Enforcement (BCSE), ██████ County Office, informed a worker in the WV DHHR Income Maintenance (IM) Unit, ██████ County Office, that the Defendant did not have custody of her two children (Exhibit M-2). The IM worker referred the matter to the WV DHHR, Office of Inspector General, Investigations and Fraud Management (IFM) Unit.

The Department’s representative, an investigator for the IFM Unit, submitted into evidence an Order on Petition for Modification from the ██████ County Family Court (Exhibit M-4). This order terminated the child support obligation of the Defendant’s ex-husband. The section of the order labeled “Findings of Fact” contains a finding which reads as follows: “That the Respondent admitted that the children have not resided with her since October 2016.” The Order identifies the Respondent in that matter as the Defendant in this case.

The Department’s representative submitted as evidence a LIEAP application signed by the Defendant on December 15, 2016 (Exhibit M-5). On this form, she listed herself and her two

children as her household members. He submitted a SNAP Six- and Twelve-Month Contact Form signed by the Defendant on February 7, 2017 (Exhibit M-6), which lists the Defendant and her two children as her household members. He submitted a LIEAP application signed by the Defendant on November 17, 2017 (Exhibit M-7), listing the Defendant and her two children as her household members. Finally, he submitted a SNAP Six- and Twelve-Month Contact Form signed by the Defendant on January 24, 2018 (Exhibit M-8), which again lists the Defendant and her two children as her household members.

The Defendant did not appear at the hearing to refute the Department's position that she failed to report her children's absence from her household. Therefore, the Department proved by clear and convincing evidence that the Defendant committed an Intentional Program Violation (IPV) by reporting her children resided in her home when in fact they lived with their father, on LIEAP applications and SNAP periodic reviews from December 2016 through January 2018.

CONCLUSIONS OF LAW

- 1) Pursuant to the Code of Federal Regulations 7 CFR §273.16, the Department provided clear and convincing evidence that the Defendant made false or misleading statements, or misrepresented, concealed or withheld facts, in order to receive SNAP benefits to which her assistance group was not entitled.
- 2) The Department presented clear and convincing evidence the Defendant committed an Intentional Program Violation by reporting that her children lived in her household, when in fact they lived with their father, on LIEAP applications and SNAP periodic reviews from December 2016 through January 2018, in violation of WV IMM §§1.2.4, 3.2.1.B.5 and 11.2.
- 3) The Department must impose a disqualification penalty. The disqualification penalty for a first offense is one year.

DECISION

It is the ruling of the Hearing Officer that the Defendant committed an Intentional Program Violation. She will be disqualified from participating in SNAP for one year, beginning November 1, 2018.

ENTERED this 1st Day of October 2018.

Stephen M. Baisden
State Hearing Officer