



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
Berkeley County DHHR
PO Box 1247
Martinsburg, WV 25402**

**Bill J. Crouch
Cabinet Secretary**

**Jolynn Marra
Interim Inspector General**

October 16, 2018



RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2141

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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Cassandra Burns, IFM, [REDACTED] County DHHR

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

██████████,

Defendant,

v.

Action No: 18-BOR-2141

**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 August 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' Common Chapters Manual and Federal Regulations at 7 CFR §273.16. The hearing was convened on October 2, 2018.

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

At the hearing, the Movant appeared by Cassandra Burns, Criminal Investigator with Investigations and Fraud Management (IFM). The Defendant failed to appear. Ms. Burns 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 Report of Overpayment Determination, February 2012 to October 2016
- M-3 Court Orders, Circuit Court of ██████████ County, West Virginia signed and dated by the Honorable Judge ██████████ on May 28, 1997; Plea of Guilty signed and dated May 28, 1997 by the Defendant; Petition to Enter Plea of Guilty signed and dated May 28, 1997 by the Defendant; Defendant's Statement in Support of Guilty Plea signed and dated May 28, 1997 by the Defendant; Attorney's Statement in Support of Guilty Plea signed and dated by the Defendant's attorney, ██████████
- M-4 Circuit Court of ██████████ County, West Virginia Order, signed and dated by the Honorable Judge ██████████ on July 7, 1997

- M-5 Department of Health and Human Resources Combined Application and Review Form for Financial, Medical and Supplemental Nutrition Assistance Program, and Rights and Responsibilities, signed and dated February 7, 2012
- M-6 Department of Health and Human Resources Combined Application and Review Form for Financial, Medical and Supplemental Nutrition Assistance Program, and Rights and Responsibilities, signed and dated July 27, 2012
- M-7 Department of Health and Human Resources Combined Application and Review Form for Financial, Medical and Supplemental Nutrition Assistance Program, and Rights and Responsibilities, signed and dated January 22, 2013
- M-8 CSLR Supplemental Nutrition Assistance Program (SNAP) and Medicaid review form, signed and dated July 14, 2013
- M-9 CSLE Supplemental Nutrition Assistance Program (SNAP) review form, and Rights and Responsibilities, signed and dated January 31, 2014
- M-10 CSLR Supplemental Nutrition Assistance Program (SNAP) and Medicaid review form, and Rights and Responsibilities, signed and dated July 15, 2014
- M-11 CSLR Supplemental Nutrition Assistance Program (SNAP) and Medicaid review form, and Rights and Responsibilities, signed and dated December 30, 2015
- M-12 West Virginia Income Maintenance Manual (WV IMM), Chapter 1, §1.2
- M-13 West Virginia Income Maintenance Manual (WV IMM), Chapter 20, §20.2
- M-14 West Virginia Income Maintenance Manual (WV IMM), Chapter 20, §20.6.A
- M-15 Advance Notice of Administrative Disqualification Hearing Waiver; Waiver of Administrative Hearing ([REDACTED])
- M-16 Advance Notice of Administrative Disqualification Hearing Waiver; Waiver of Administrative Hearing ([REDACTED])

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 Movant alleged that the Defendant committed an Intentional Program Violation (IPV) by falsely reporting on SNAP applications and reviews from February 2012 through December 2015 that there were no convicted drug felons in his household when, in fact, his wife, was convicted of a drug felony in 1997. The Movant requested that an IPV penalty of 12 months be imposed against him.
- 2) The Defendant was notified of the hearing by scheduling order mailed on August 8, 2018. The Defendant failed to appear for the hearing or provide good cause for his 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) On May 23, 1997, the Defendant's wife, [REDACTED], then known as [REDACTED], entered a plea of guilty to the felony offense of the Delivery of a Schedule I Controlled

Substance – Marijuana, which was accepted, and an Order was entered by the Honorable Judge [REDACTED], Circuit Court of [REDACTED] County, West Virginia. (Exhibit M-3)

- 4) By Order of Judge [REDACTED] the Defendant's wife was sentenced to one-to-five years in the state penitentiary and fined \$1,000, which was suspended with an order of confinement to the [REDACTED] for a period of six months to two years. (Exhibit M-4)
- 5) On multiple SNAP applications and reviews from February 2012 through December 2015, the Defendant attested that no one in his household had been convicted of a drug felony for possession, use or distribution of a controlled substance on or after August 23, 1996. (Exhibits M-5 through M-11)
- 6) The Defendant has no prior IPV penalties.

APPLICABLE POLICY

Code of Federal Regulations, 7 CFR §273.16, mandates that 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.

WV IMM, Chapter 11, §11.2.3.B, states that IPV's 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, explains that persons who have been found guilty of an IPV are disqualified as follows: first offense = one-year disqualification; second offense = two-year disqualification; and third offense = permanent disqualification. Individuals convicted of an offense involving an element of the possession, use or distribution of a controlled substance as defined by Section 802 (6) of the Controlled Substance Act are also permanently excluded from participation in SNAP.

WV IMM, Chapter 1, §1.2.4, explicitly states that it is the client's responsibility to provide complete and accurate information about her circumstances so that the Worker can make a correct determination about her eligibility.

DISCUSSION

Federal and State regulations mandate the permanent disqualification from participation in SNAP benefits if an individual has been convicted of a felony drug offense for possession, use or distribution of a controlled substance. The Defendant's wife was convicted of a felony offense for the delivery of a Schedule I controlled substance in 1997. Thus, she is permanently disqualified from participating in SNAP and was ineligible to receive SNAP benefits for herself when she and the Defendant applied in February 2012.

SNAP applicants and clients must provide complete and accurate information about their circumstances so that the worker can make a correct determination about SNAP eligibility. This requirement also includes that an applicant or client report a drug felony conviction made on or after August 23, 1996 of anyone in the household. The evidence showed that the Defendant had multiple opportunities from February 2012 through December 2015 to report his wife's drug felony conviction but did not do so.

Federal regulations define an Intentional Program Violation as making a false statement related to the acquisition of SNAP benefits. The Defendant gave false information at his February 2012 SNAP application and subsequent SNAP reviews by reporting that no one in his household had been convicted of a drug felony offense. The Defendant's actions meet the definition of an IPV.

The Movant provided clear and convincing evidence that the Defendant committed an act of IPV to obtain SNAP benefits by intentionally making false or misleading statements, concealing, or withholding facts regarding his wife's felony drug conviction in 1997.

The Defendant failed to appear to refute the Movant's allegations.

CONCLUSIONS OF LAW

- 1) The Movant provided irrefutable evidence that the Defendant's wife, and household member, was convicted of a drug felony after August 23, 1996, as defined by statute.
- 2) The Defendant was required to report the status of any member of his household with a felony drug conviction so that the Movant could make a correct determination about the SNAP eligibility of his household.
- 3) The Movant provided clear and convincing evidence that the Defendant made false statements on SNAP applications and reviews from February 2012 through December 2015 by stating that no one in his household had been convicted of a drug felony after August 23, 1996 in order to receive SNAP benefits for which the household was not entitled.
- 4) The Defendant must be disqualified for 12 months from participating in SNAP.

DECISION

It is the finding of the State Hearing Officer that the Defendant committed an Intentional Program Violation. The Defendant will be disqualified from participating in SNAP for a 12-month period to begin November 1, 2018.

ENTERED this 16th day of October 2018.

Lori Woodward, State Hearing Officer