



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

**Bill J. Crouch**  
Cabinet Secretary

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

**Jolynn Marra**  
Interim Inspector General

November 26, 2019



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 19-BOR-2555

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,

State Hearing Officer  
Member, State Board of Review

Encl: Defendant'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**

██████████,

**Defendant,**

v.

**Action Number: 19-BOR-2555**

**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 October 10, 2019. 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 November 13, 2019.

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 must therefore 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. Appearing as a witness for the Department was Amy Clelland, Front-End Fraud Unit. The Defendant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- M-1 Supplemental Nutrition Assistance Program (SNAP) review reporting form, received November 7, 2017
- M-2 eRAPIDS Case Comments, dated November 7, 2017 through December 4, 2017
- M-3 SNAP 6 or 12 Month Contact Form, received June 13, 2018
- M-4 eRAPIDS Case Comments, dated March 31, 2018 through November 5, 2018
- M-5 inROADS Application, submitted July 31, 2018
- M-6 SNAP review reporting form, received November 1, 2018
- M-7 SNAP 6 or 12 Month Contact Form, signed April 25, 2019
- M-8 eRAPIDS Case Comments, dated November 7, 2018 through August 19, 2019
- M-9 Front-End Fraud Unit Investigative Findings, dated September 5, 2019
- M-10 Absent Parent Address print out
- M-11 Vehicle System Master Inquiry
- M-12 Postmaster Address Information Request, dated August 5, 2019

- M-13 [REDACTED] County Assessor Property Record
- M-14 Redacted Statements
- M-15 Employee Wage Data screen prints
- M-16 DHHR Letter, dated September 6, 2019; United Parcel Service (UPS) Payment History
- M-17 Insta Client Insights
- M-18 Benefit Recovery Referral, dated September 10, 2019; Investigation Findings, dated September 10, 2019
- M-19 DHHR Notices, dated September 10 and September 19, 2019
- M-20 Referral/Claim Comments
- M-21 West Virginia Driver's License
- M-22 eRAPIDS Case Summary
- M-23 eRAPIDS Case Benefit Summary
- M-24 eRAPIDS Unearned Income
- M-25 eRAPIDS IV-D Financial Information
- M-26 eRAPIDS SNAP Budget
- M-27 West Virginia Income Maintenance Manual

**Defendant's Exhibits:**

- D-1 Handwritten Statements, undated

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 Supplemental Nutrition Assistance Program (SNAP) benefits for herself and her two minor children.
- 2) The Defendant resides at [REDACTED].
- 3) The Defendant shares a minor child with [REDACTED] (Mr. [REDACTED]).
- 4) Mr. [REDACTED] routinely stays at the residence overnight.
- 5) The Defendant's home is owned by [REDACTED], parents of [REDACTED] (Exhibit M-13).
- 6) On November 7, 2017; June 13, July 31, and November 1, 2018; and April 25, 2019, the Defendant submitted SNAP review, School Clothing Allowance (SCA), or contact forms which reflected only the Defendant and her two minor children in the household (Exhibits M-1, M-3, and M-5 through M-7).

- 7) On November 4, 2017 and November 1, 2018, the Defendant signed her completed review and contact forms acknowledging that the information she provided was true and correct and acknowledged that she accepted the listed responsibilities (Exhibits M-1, M-3, and M-5 through M-7).
- 8) On November 4, 2017 and November 1, 2018, the Defendant signed that she understood that any member of her Assistance Group (AG) found to have committed an act of Intentional Program Violation (IPV) would be disqualified from receiving SNAP benefits for a penalty period of twelve-months for the first offense (Exhibits M-1 and M-6).
- 9) On November 7, 2017 and August 1, 2018, the Defendant completed SNAP benefit eligibility interviews with the Movant and failed to disclose that Mr. [REDACTED] was a member of the household (Exhibits M-2, M-4).
- 10) On May 23, 2019, upon the Movant's inquiry regarding Mr. [REDACTED] the Defendant reported that he was not in the household (Exhibit M-8).
- 11) On May 23, 2019, the Defendant's SNAP eligibility was pended and the Movant requested that the Defendant submit income verification for Mr. [REDACTED] by June 2, 2019 (Exhibit M-8).
- 12) The Defendant failed to submit income verification for Mr. [REDACTED] to the Movant by June 2, 2019 (Exhibit M-8).
- 13) On August 2, 2019, the Defendant reported to the Movant that Mr. [REDACTED] was not in the household (Exhibit M-8).
- 14) On August 5, 2019, the [REDACTED] United States Postal Service (USPS) affirmed that Mr. [REDACTED] mail is delivered at the Defendant's address (Exhibit M-12).
- 15) On August 8, 2019, the Defendant reported that Mr. [REDACTED] was in the household and requested her benefit case be closed (Exhibit M-8).
- 16) On August 9, 2019, the Defendant's case was closed (Exhibit M-8).
- 17) On September 5, 2019, the Front-End Fraud Unit's (FEFU) investigative findings determined that Mr. [REDACTED] resided with the Defendant and had been employed at United Parcel Service (UPS) since [REDACTED] pursuant to sworn statements, wage verification, and postal verification (Exhibit M-9).
- 18) Mr. [REDACTED] was hired at UPS on [REDACTED] (Exhibit M-17).
- 19) Mr. [REDACTED] used the Defendant's address for employment purposes from September 30, 2018 through July 22, 2019 (Exhibits M-16 and M-17).

20) Mr. [REDACTED] registered vehicles to the Defendant's address in 2004, 2007, 2009, 2014, 2017, and 2018 (Exhibit M-11).

21) The Defendant had no previous history of Intentional Program Violation (IPV).

### **APPLICABLE POLICY**

#### **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 his circumstances so that the Worker is able to make a correct determination about his eligibility.

#### **WVIMM § 2.2.1.C Prolonged Absence from the Home provides in part:**

Regardless of the reason for the absence, any person expected to be absent from the home for a full calendar month or more is not eligible to be included in the AG. Shorter absences do not affect eligibility. This policy applies to visiting, obtaining vocational training or education, and obtaining medical care. This policy applies to in-state and out-of-state travel.

Although an individual may meet the residency requirement, he may not be eligible to be included in the AG. Refer to Chapter 3 for specific requirements about who may be included in the AG.

#### **WVIMM §§ 3.2.1.A and 3.2.1.A.4 Who Must Be Included provides in part:**

The SNAP Assistance Group (AG) must include all eligible individuals who both live together and purchase food and prepare meals together. Natural children who are under 22 years of age and who live with a parent must be in the same AG as that parent. There is no required maximum/minimum amount of time the child must spend with the parent for the child to be included in the SNAP AG.

#### **Code of Federal Regulations (March 2019) 7CFR § 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 (March 2019) 7CFR § 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 for a period of twelve months for the first intentional Program violation.

**Code of Federal Regulations (March 2019) 7CFR § 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 (March 2019) 7CFR § 243.16(c)(1) provides in part:**

An intentional program violation is defined as an individual having intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts.

**DISCUSSION**

The Movant investigated the Defendant's receipt of SNAP benefits and determined that the Defendant received SNAP benefits during the period of January 1, 2018 through May 31, 2019 that she was not entitled to due to an Intentional Program Violation (IPV). 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 and an IPV be established. The Defendant argued that she reported many times that Mr. [REDACTED] used her address for permanent residence but did not reside in her home. The Movant had to prove by clear and convincing evidence that Mr. [REDACTED] should have been included in the Defendant's AG and that the Defendant intentionally withheld or concealed information for the purpose of receiving SNAP benefits.

**Residence**

The Movant submitted redacted witness statements as evidence in support of demonstrating that Mr. [REDACTED] was a resident of the Defendant's home. Common Chapters provides that the Defendant has a right to cross-examine witnesses. Without disclosure of the identities of the witnesses and no substantial justification for redacting the witness identities, the Defendant's right to cross-examination and to refute the witnesses' claims was prejudiced as the nature of the character and reliability of the witnesses could not be discerned without knowledge of their identities. As such, the written witness statements submitted by the Movant were given little weight in the decision of this Hearing Officer.

The Defendant argued that she had repeatedly advised the Movant that Mr. [REDACTED] used the residence address but did not reside in the home. The Defendant testified that she had advised

several workers that he did not reside in the home but used the Defendant's residence as a permanent address. The Defendant's applications and Movant's case comments which documented eligibility interviews and case actions from 2017 forward failed to corroborate that the Defendant had ever advised the Movant that Mr. [REDACTED] used the Defendant's address but did not reside in the home. No evidence was entered to corroborate the Defendant's claim. The evidence reflected that upon the Movant's inquiry, the Defendant advised the Movant on May 23 and August 2, 2019 that Mr. [REDACTED] did not reside in her home. The Movant's case comments then reflected that on August 8, 2019, the Defendant reported that Mr. [REDACTED] was back in the home. The Movant's evidence reflected that on May 23, 2019, Mr. [REDACTED] was using the same address as the Defendant. The evidence demonstrated that the Defendant and Mr. [REDACTED] were provided with an opportunity to verify Mr. [REDACTED] income and living arrangement by June 2, 2019, but no verification was submitted.

While the Defendant's testimony provided that Mr. [REDACTED] stayed overnight at other locations during the period in question, he continued to use the Defendant's address as his permanent address. The Defendant's evidence reflected that even though he would stay at other locations, he routinely returned to the home to spend time with their mutual child and would spend the night. The Defendant's submitted written witness statements as evidence which reflected that Mr. [REDACTED] stayed with other individuals, however, the frequency and duration of his stays elsewhere could not be discerned. Policy provides that absences shorter than a calendar month do not prohibit an individual from being included in the AG. The Defendant's evidence failed to demonstrate discernable periods of time which Mr. [REDACTED] was clearly absent from the residence for periods of a full calendar month or more.

Because the individual, the Defendant, and their mutual child shared a permanent residence, the individual was required to be included in the Defendant's AG. Mr. [REDACTED] was not eligible to be excluded from the AG as a resident of the home who purchased and prepared meals elsewhere more than 50% of the time –as permitted by WVIMM §3.2.1.A.6. No additional evidence was entered to demonstrate that the individual should have been excluded from the AG pursuant to §3.2.1.B.3. The evidence demonstrated by clear and convincing evidence that the individual should have been included in the defendant's AG.

### Intention

The evidence demonstrated that the Defendant routinely omitted Mr. [REDACTED] on her SNAP application and eligibility-review reporting forms. The evidence demonstrated that the Defendant had acknowledged repeatedly by signature that the information she reported was factual and that she understood failure to disclose eligibility-relevant information may result in the application of a disqualification penalty.

By the Defendant's own admission during the hearing, Mr. [REDACTED] used her home as a permanent residence for purposes of employment, vehicle registration, child support enforcement, obtaining mail and would regularly stay overnight at the home while visiting their mutual child. The uninterrupted historic and pervasive use of the Defendant's address by Mr. [REDACTED] as a permanent residence and the Defendant's failure to advise the Movant regarding Mr. [REDACTED] status in the home until May 2019 verify by clear and convincing evidence that the Defendant intentionally withheld information regarding Mr. [REDACTED] for the purpose of obtaining SNAP benefits. Because

no evidence was entered to demonstrate that the Defendant had a previous history of Intentional Program Violation (IPV), a first offense 12-month disqualification penalty must be imposed, beginning in accordance with timelines established in federal regulations.

### **CONCLUSIONS OF LAW**

- 1) The Defendant's home is the permanent residence of [REDACTED] and was his residence during the Movant's January 2018 through May 31, 2019 period of investigation.
- 2) The Defendant and Mr. [REDACTED] have a mutual minor child who lives in the home.
- 3) Because natural children who are under 22 years of age and who live with a parent must be in the same Assistance Group (AG) as that parent, Mr. [REDACTED] was required to be included in the Defendant's AG.
- 4) The Defendant was required to report accurate information regarding her household's members and income so that the Movant could make a correct determination about her SNAP benefit eligibility.
- 5) The Defendant first reported Mr. [REDACTED] as a member of her household on August 8, 2019.
- 6) The Defendant committed an Intentional Program Violation (IPV) by intentionally making false or misleading statements, misrepresenting, concealing, and withholding facts regarding her household composition for the purpose of receiving Supplemental Nutrition Assistance Program (SNAP) benefits.
- 7) The Defendant had no previous history of IPV penalty; therefore, a first offense 12-month disqualification penalty must be imposed.

### **DECISION**

It is the finding of this State Hearing Officer that the Defendant committed an Intentional Program Violation and a first-offense 12-month disqualification penalty period must be imposed.

**ENTERED this 26<sup>th</sup> day of November 2019.**

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**Tara B. Thompson**  
**State Hearing Officer**