



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

December 19, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 19-BOR-2626

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Emily Shumate, WVDHHR

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

[REDACTED],

Defendant,

v.

Action Number: 19-BOR-2626

**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 October 25, 2019. 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 Section 273.16. The hearing was convened on December 3, 2019.

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

At the hearing, the Movant appeared by Emily Shumate, Repayment Investigator, WVDHHR. The Defendant failed to appear.

The witness was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- | | |
|------|---|
| M-1 | ADH Hearing Summary |
| M-2 | Case Members History |
| M-3 | SNAP Issuance History-Disbursement |
| M-4 | Food Stamp Allotment Determination |
| M-5 | Non-Financial Eligibility Determination |
| M-6 | EBT Transaction Search Results |
| M-7 | Case Comments |
| M-8 | Data Exchange-New Hire Details |
| M-9 | MapQuest directions from internet |
| M-10 | Dollar General Store Locator from internet |
| M-11 | SNAP 6 or 12 Month Contact Form received on February 25, 2019 |
| M-12 | SNAP review form received on September 25, 2019 |
| M-13 | Waiver of Administrative Disqualification Hearing |

M-14	Advance Notice of Administrative Disqualification Hearing Waiver dated October 7, 2019
M-15	West Virginia Income Maintenance Manual Chapters 1.2.4 and 11.2
M-16	Code of Federal Regulations Section 273.16

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) A request for an Administrative Disqualification Hearing was received by the Board of Review from the West Virginia Department of Health and Human Resources, hereinafter Movant, on October 25, 2019.
- 2) The Movant contends that the Defendant has committed an Intentional Program Violation (IPV), and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, for a period of 12 months.
- 3) Notification of the December 3, 2019 hearing was mailed to the Defendant on or about October 29, 2019 via First Class U.S. Mail.
- 4) The hearing convened as scheduled at 1:30 p.m. on December 3, 2019, and as of 1:45 p.m., the Defendant failed to call in for the telephone hearing. As set forth in the Code of Federal Regulations found at §7 CFR 273.16 (e) (4), and the West Virginia Department of Health and Human Resources Common Chapters Manual Chapter 740.20, the hearing was conducted without the Defendant in attendance.
- 5) The Movant's Investigations and Fraud Management Unit received a referral from the Department's Economic Services Unit in September 2019 concerning the Defendant's state of residence.
- 6) The Economic Services Unit received two new hire alerts for the Defendant, listing the Defendant's address as [REDACTED] (M-8). The first new hire alert indicated that the Defendant was hired by [REDACTED] on May 20, 2019. The second new hire alert listed the [REDACTED] address for the Defendant and indicated that the Defendant began work at [REDACTED], on July 9, 2019.
- 7) Electronic Benefits Transfer (EBT) Transaction Search Results reveal that all transactions (with the exception of one entry) made on the Defendant's EBT card between January 2019 and September 2019 were made in [REDACTED] or [REDACTED]. (M-6). Both cities are in close proximity to the West Virginia border.

- 8) The Defendant telephoned the Respondent's office on September 4, 2019 regarding a SNAP case review. Case Comments recorded by the worker state: "She [the Defendant] said she was already en route to [REDACTED] as her uncle has cancer and is dying and I told her when she gets back from seeing him next week, to complete her form and return it and I would call her to do the rev [sic]." (M-7)
- 9) The Defendant completed the SNAP review on September 25, 2019 and continued to report her mailing address as [REDACTED] (M-7 and M-12). During the review, the worker questioned the Defendant about the two new hire alerts and the Defendant denied having been employed at either location. The worker also questioned the Defendant about the EBT card use in [REDACTED] and the Defendant indicated that she would check on the situation because "her nephew had been taking some of their things."
- 10) The Movant's case worker requested verification of the Defendant's address during the September 2019 SNAP case redetermination, but the verification was not provided, and the Defendant's case was closed for lack of verification (M-7).
- 11) The Movant contends that the Defendant was not residing in West Virginia and received SNAP benefits to which she was not entitled for the period of April 2019 through September 2019.

APPLICABLE POLICY

Code of Federal Regulations Section 273.16.c.1 (M-16) states that an Intentional Program Violation includes committing an 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 as part of an automated benefit delivery system (access device).

West Virginia Income Maintenance Manual §1.2.4 (M-15) states that it is the client's responsibility to provide complete and accurate information about his or her circumstances so that the worker is able to make a correct determination about his eligibility.

West Virginia Income Maintenance Manual Chapter 2.2 states that to be eligible to receive benefits, the client must be a resident of West Virginia.

West Virginia Income Maintenance Manual §11.2.3.B (M-15) 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.

West Virginia Income Maintenance Manual §3.2.1.B.5 states 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.

DISCUSSION

Regulations specify that to be eligible for benefits from the State of West Virginia, the client must be a resident of West Virginia. An Intentional Program Violation includes committing an 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 as part of an automated benefit delivery system (access device).

During the hearing, the Movant submitted new hire alert information - which is not considered verified upon receipt - indicating that the Defendant was employed in West Virginia in May 2019 and in [REDACTED] in July 2019. The Defendant denied being employed at either location and reported that she continued to reside on [REDACTED] in [REDACTED]. There is no indication that the Movant attempted to verify the employment information on the new hire alerts.

While the Defendant's EBT card was clearly being used in [REDACTED] the case worker recorded that the Defendant reported traveling to [REDACTED] to be with her uncle who was dying of cancer. Based on this information, the Defendant provided a plausible explanation for spending time in [REDACTED] and there is no clear and convincing evidence that the Defendant was residing in [REDACTED]

CONCLUSIONS OF LAW

- 1) An individual must reside in West Virginia to be eligible for SNAP benefits in the state.
- 2) Intentional Program Violations 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.
- 3) The Defendant denied residing or working in the State of [REDACTED]
- 4) The Movant's records provide a plausible reason why the Defendant may have been traveling to [REDACTED] and using EBT benefits out of state.
- 5) The Movant provided no employment records to support its contention that the Defendant was employed in [REDACTED]
- 6) The Movant has not provided clear and convincing evidence to support the application of an Intentional Program Violation penalty.

DECISION

The Movant has not shown - by clear and convincing evidence – that Defendant committed an Intentional Program Violation. Therefore, the Movant’s proposal to apply an IPV penalty is REVERSED.

ENTERED this 19th Day of December 2019.

**Pamela L. Hinzman
State Hearing Officer**