



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary**

**Christopher G. Nelson
Interim Inspector General**

November 2, 2023

[REDACTED]

RE: [REDACTED] **v. WVDHHR**
ACTION NO.: 23-BOR-3012

[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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Robin Taylor, WVDHHR

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

██████████,

Defendant,

v.

Action Number: 23-BOR-3012

**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 ██████████. 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. This fair hearing convened on November 2, 2023.

The matter before the Hearing Officer arises from a request by the Movant for a determination as to whether the Defendant committed an Intentional Program Violation and should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for a period of twelve (12) months.

The Movant appeared by Robin Taylor, Repayment Investigator. The Defendant was self-represented. All witnesses were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Hearing Request
- M-2 Advance Notice of Administrative Disqualification Hearing Waiver
- M-3 Waiver of Administrative Disqualification Hearing
- M-4 PATH SNAP Application submitted on November 29, 2021
- M-5 Case Comments dated December 3, 2021 to October 12, 2022
- M-6 SNAP Claim Determination Form
- M-7 Income Verification Form
- M-8 Bureau of Child Support Enforcement Case Comments dated June 9, 2022
- M-9 School Enrollment Form for ██████████
- M-10 Written Statement for ██████████

M-11 West Virginia Income Maintenance Manual § 1.2.4

M-12 West Virginia Income Maintenance Manual § 21.6.3

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 Movant alleged that the Defendant committed an Intentional Program Violation (IPV) by falsely reporting her household composition and requested that a twelve (12) month penalty be imposed against her.
- 2) The Defendant is not a current recipient of Supplemental Nutrition Assistance Program benefits.
- 3) The Defendant relocated to West Virginia in January 2020 and completed an application for SNAP benefits.
- 4) The Defendant had joint custody of her minor child, [REDACTED]
- 5) The Movant approved initial SNAP benefits without the Defendant's minor child in the assistance group.
- 6) The minor child, [REDACTED], was later added to the Defendant's assistance group after the initial approval.
- 7) On November 29, 2021, the Defendant completed an additional application for SNAP benefits reporting that her assistance group consisted of herself and a minor child, [REDACTED] (Exhibit M-4).
- 8) On June 9, 2022, the Bureau of Child Support Enforcement (BCSE) conducted a telephonic interview with the Defendant and learned that the [REDACTED] had been a resident of [REDACTED] since 2016.
- 9) The minor child was enrolled with the [REDACTED] school system until July 31, 2019. (Exhibit M-9)
- 10) The minor child was Home-schooled until January 1, 2020. (Exhibit M-9)

- 11) The minor child became employed with [REDACTED] on July 20, 2020. (Exhibit D-7)
- 12) The minor child reported a household address of [REDACTED] (Exhibit D-7)
- 13) The minor child resided with his father in [REDACTED] since 2013. (Exhibit M-10)

APPLICABLE POLICY

Code of Federal Regulations, 7 CFR §273.16 documents:

An individual making a false or misleading statement, or misrepresenting, concealing, or withholding facts, violating the Food Stamp Program (SNAP), or any State statute for the purpose of acquiring, receiving, possessing, or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system has committed an Intentional Program Violation (IPV).

Code of Federal Regulations, 7 CFR §273.16(b) documents:

(1) Individuals found to have committed an Intentional Program Violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of twelve months for the first Intentional Program Violation, except as provided under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section;

(ii) For a period of twenty-four months upon the second occasion of any Intentional Program Violation, except as provided in paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section; and

(iii) Permanently for the third occasion of any Intentional Program Violation.

(13) The individual must be notified in writing once it is determined that he/she is to be disqualified. 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.

West Virginia Income Maintenance Manual §1.2.4 documents:

It is the client's responsibility to provide information about his/her circumstances, so the Worker is able to make a correct decision about his/her eligibility.

West Virginia Income Maintenance Manual §11.2.3. B documents:

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.

West Virginia Income Maintenance Manual §3.2.1. B.5 documents:

Persons who have been found guilty of an IPV are disqualified as follows:

- First offense – one-year disqualification
- Second offense - two-year disqualification
- Third offense - permanent disqualification

West Virginia Income Maintenance Manual § 3.2.1.A documents:

Natural or adopted children and stepchildren 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 a parent for the child to be included in the SNAP AG. If no one is receiving any SNAP benefits for the child, it is assumed that the living arrangements are not questionable, and the child is added to the SNAP AG that wishes to add him. If the child is already listed in another SNAP AG or the other parent wishes to add the child to his SNAP AG, the parents must agree as to where the child "lives" and, ultimately, to which SNAP AG he is added. Where the child receives the majority of his meals, or the percentage of custody, must not be the determining factor for which parent receives SNAP for the child.

DISCUSSION

The Movant requested an Administrative Disqualification Hearing from the Board of Review citing that the Defendant committed an Intentional Program Violation (IPV) by willfully misrepresenting her household situation by falsely reporting her minor child as a member of her household when he was a resident of another state.

The Movant requests that the Defendant be disqualified from receiving SNAP benefits for a period of twelve (12) months.

For purposes of the Administrative Disqualification Hearing, the Movant must prove by clear and convincing evidence that the Defendant intentionally made false or misleading statements, misrepresented, concealed, or withheld facts to obtain SNAP assistance to which he was not entitled.

Robin Taylor, Repayment Investigator, contends that the Defendant committed an IPV by misrepresenting her household composition because the Defendant's minor child resided with his father in [REDACTED] while he was included in his mother's assistance group. Through a June 2022, interview between the Defendant and the Bureau of Child Support Enforcement, the Movant discovered that the child in question resided with his father in [REDACTED] since 2016 with the occasional visit to West Virginia (Exhibit M-8). During the BCSE interview, when the Defendant was questioned why the child was included in the SNAP benefits, the Defendant reported [REDACTED] came in to visit every now and then and her worker told her she had to include him." (Exhibit M-8). The Movant confirmed the child's residence through school records (Exhibit M-9) and a verbal statement from the minor child's father (Exhibit M-10) that the child resided in [REDACTED] since 2013.

The Defendant maintained that she had no intention to misrepresent her child's living arrangements and only included her son in the SNAP benefits on the recommendation of her local office worker. The Defendant testified that she had joint custody of her son and reported that information at the initial SNAP application. The Defendant testified that due to the custodial agreement, the local office informed her she could include her son in the SNAP benefits and he was later included in the household after the initial approval of her SNAP application. The Defendant indicated that the minor child resided with his father in [REDACTED], about an hour and a half from her residence, and he would occasionally visit West Virginia.

Governing policy dictates that there is no required time limit that a child must spend with a parent for the child to be included in a SNAP assistance group and that if the child is not receiving SNAP benefits, it is assumed that the living arrangements are not questionable, and the child is included in the SNAP assistance group that wishes to add the child. Evidence revealed that the Defendant reported the custodial agreement at the time of application and is supported by the Defendant's interview with BCSE (Exhibit M-8), in which she acknowledged the custodial agreement and that local office worker informed her that the child had to be included in the assistance group.

Based on the evidence and information provided during the hearing, the Movant did not prove by clear and convincing evidence that the Defendant committed an Intentional Program Violation.

CONCLUSIONS OF LAW

- 1) An Intentional Program Violation can be established for SNAP purposes when an individual misrepresents his/her case circumstances.
- 2) The Movant contends that the Defendant misrepresented her household composition by including her son in the SNAP assistance group while he resided with his father in [REDACTED].

- 3) The Defendant contends that she reported a joint custodial agreement involving her son and his father at the time of the initial SNAP application.
- 4) Policy requires that there is no required time limit a child must spend with a parent for a child to be included in a SNAP assistance group and living arrangements are not questionable when a parent desires to include them in the assistance group.
- 5) Clear and convincing evidence was not provided to support the imposition of an Intentional Program Violation.
- 6) The Movant's proposal to apply an Intentional Program Violation to the Defendant's SNAP benefits cannot be affirmed.

DECISION

The State Hearing Officer finds that the Defendant has not committed an Intentional Program Violation. The Movant's proposal to impose a 12-month IPV penalty on SNAP benefits is **REVERSED**.

ENTERED this _____ day of November 2023.

Eric L. Phillips
State Hearing Officer