



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

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

**Christopher G. Nelson
Interim Inspector General**

January 23, 2024

[REDACTED]

RE: [REDACTED] v. WVDH
ACTION NO.: 23-BOR-3527

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 the Department of Human Services. These same laws and regulations are used in all cases to ensure 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,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

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

cc: Donald Greathouse, Investigations and Fraud Management

**WEST VIRGINIA DEPARTMENT OF HEALTH
BOARD OF REVIEW**

[REDACTED]

Defendant,

v.

Action Number: 23-BOR-3527

**WEST VIRGINIA DEPARTMENT OF
HEALTH,**

Movant.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from an administrative disqualification hearing (ADH) for [REDACTED] requested by the Movant on November 29, 2023. This hearing was held in accordance with the provisions found in Chapter 700 of the Board of Review Common Chapters Manual and Federal Regulations at 7 CFR § 273.16. The hearing was convened on December 28, 2023.

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

At the hearing, the Department appeared by Donald Greathouse, Investigations and Fraud Management. The Defendant did not appear. The Movant's representative was sworn in and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Benefit Recovery Referrals, dated June 16 and September 28, 2023
- M-2 SNAP Claim Determination sheets; Case Benefit Summary screen print
- M-3 Investigation Scheduling Notice, dated September 21, 2023
- M-4 Advance Notice of ADH Waiver; Waiver of ADH
- M-5 Case Comments, dated March through May 2023
- M-6 SNAP Application, received February 17, 2023
- M-7 Case Comments, dated March through May 2023
- M-8 [REDACTED] Facsimile, received March 10, 2023
- M-9 [REDACTED] Benefit screen print
- M-10 Electronic Code of Federal Regulations (e-CFR), (October 29, 2022) § 273.16
- M-11 West Virginia Income Maintenance Manual (WVIMM) Chapter 11 Excerpts
- M-12 WVIMM Chapter 1 excerpts

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 Defendant received SNAP benefits for a two-person household that included the Defendant and her son, Child [REDACTED] from October 1, 2022, through January 31, 2023, and from February 17, 2023, through May 31, 2023 (Exhibit M-2).
- 2) On June 16, 2023, the Movant received a Benefit Recovery Referral alleging the Appellant was ineligible to receive SNAP — from October 1, 2022, through January 31, 2023, and from February 17 through May 31, 2023 — because Child [REDACTED] was a SNAP benefit recipient in [REDACTED] (Exhibit M-1).
- 3) On October 6, 2023, the Movant issued a notice advising that the Defendant intentionally violated the SNAP rules by failing to report Child [REDACTED] was not residing in her household (Exhibit M-4).
- 4) The Movant's unsigned Waiver of ADH indicated that the Defendant had committed an intentional violation of a SNAP rule by failing to report Child [REDACTED] no longer resided in her household. The waiver indicated the Appellant received SNAP from October 2022 through May 2023 (Exhibit M-4).
- 5) The Movant's determination that Child [REDACTED] was not in the Defendant's household was based on information received from [REDACTED] Department of Job and Family Services.
- 6) On February 17, 2023, the Defendant applied for SNAP eligibility for a two-person household that included herself and Child [REDACTED] (Exhibit M-6).
- 7) On the February 17, 2023 application, the Defendant indicated that she purchased and prepared food with Child [REDACTED] (Exhibit M-6).
- 8) On February 17, 2023, the Movant signed that she understood her responsibility to provide complete and truthful information (Exhibit M-6).
- 9) The Movant's March 6, 2023 case comments reflected the Appellant reported two persons in her household during her SNAP eligibility interview (Exhibit M-5).
- 10) On May 5, 2023, the Movant received a facsimile from [REDACTED] Department of Job and Family Services for the Movant inquiring about terminating Child

█████ West Virginia SNAP benefits because “she has been living in █████ since October 2022” (Exhibit M-5).

- 11) The █████, facsimile consisted of three pages (Exhibit M-8).
- 12) The handwritten cover sheet did not reveal who completed the cover sheet (Exhibit M-8).
- 13) The █████ submitted September 20, 2022 █████, West Virginia Temporary Guardianship Order (hereafter, the Order) reflected a redacted name for the third-party individual designated as Child █████ guardian (Exhibit M-8).
- 14) *Exhibit A* of the █████ facsimile #4 designated, “the subject child’s grandmother, as said guardian until further Order of the Circuit Court” (Exhibit M-8).
- 15) The September 20, 2022 Order did not stipulate that the Defendant was not permitted visitation with Child █████ (Exhibit M-8).
- 16) The September 20, 2022 Order did not indicate the address at which Child █████ would reside.
- 17) The September 20, 2022 Order instructed the clerk to transmit signed copies of the order to two addresses in █████, West Virginia (Exhibit M-8).
- 18) *Exhibit A* of the █████ facsimile stipulated that the temporary guardianship order “shall not exceed 6 months.”
- 19) On October 4, 2022, Child █████ was added to an open █████ SNAP benefit case (Exhibit M-9).
- 20) The █████ SNAP benefit case record reflected a narrative notation, “Legal doc received, verifying [redacted] has custody...” (Exhibit M-9).

APPLICABLE POLICY

Household Composition

WVIMM §§ 2.2, 2.2.1.C, and 3.2.1.A provide in relevant parts: To be eligible to receive benefits, the client must be a resident of West Virginia. The SNAP Assistance Group (AG) must include all eligible individuals who both live together and purchase food and prepare meals together. An individual cannot be a member of more than one SNAP AG in any month.

Code of Federal Regulations 7 CFR § 273.3 provides in relevant parts:

- (a) A household shall live in the State in which it files an application for participation No individual may participate as a member of more than one household or in more than one project area, in any month ... The State agency shall not impose any

durational residence requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

Code of Federal Regulations 7 CFR § 273.1 (a) and (b) provide in relevant parts:

- (a) A household is composed of...
- (1) An individual living alone;
- (2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
- (3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

Code of Federal Regulations 7 CFR § 273.1(b)(1)(ii)-(iii) provides in relevant parts: A person under 22 years of age who is living with his or her natural or adoptive parents, and children under 18 of age, who lives with and is under the parental control of a household member other than a parent, must be considered as customarily purchasing food and preparing meals with others, even if they do not do so, and thus must be included in the same household unless otherwise specified.

Change Reporting and Verification

West Virginia Income Maintenance Manual § 1.2.4 provides in the relevant part:

The client's responsibility is to provide complete and accurate information about her circumstances so that the worker is able to make a correct determination about her eligibility.

Code of Federal Regulations 7 CFR § 273.2(k)(1)(iii)(C) provides in relevant parts:

- (1) Households shall report changes in accordance with the requirements in § 273.12

Code of Federal Regulations 7 CFR § 273.12(a)(1)(ii) provides in relevant part:

Households are required to report all changes in household composition, such as the addition or loss of a household member.

Code of Federal Regulations 7 CFR § 273.12(a)(2) provides in relevant part:

Certified households must report changes within 10 days of the date the change becomes known to the household, or at the State agency's option, the household must report changes within 10 days of the end of the month in which the change occurred.

Code of Federal Regulations 7 CFR § 273.15 *Fair Hearings* provides in relevant parts:

(p) *Household rights during hearing.* The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

(1) ... Confidential information that is protected from release and other documents or records that the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

Code of Federal Regulations 7 CFR § 273.2(e)(1) *Interviews* provides in relevant parts:

... The interviewer must advise households of their rights and responsibilities during the interview, including the appropriate application processing standard and the household's responsibility to report changes.

Code of Federal Regulations 7 CFR § 273.2(f) *Verification* provides in relevant sections:

Verification is the use of documentation or a contact with a third party to confirm the accuracy of statements or information. The State agency must give households at least 10 days to provide required verification

Code of Federal Regulations 7 CFR § 273.2(f)(4) *Sources of Verification* provides in relevant sections:

(iv) *Discrepancies.* Where unverified information from a source other than the household contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. The state agency may, if it chooses, verify the information directly and contact the household only if such direct verification efforts are unsuccessful.

Code of Federal Regulations 7 CFR § 273.2(f)(6) *Documentation* provides in relevant parts:

Case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

Intentional Program Violation (IPV)

Code of Federal Regulations 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 SNAP for twelve months for the first intentional program violation.

Code of Federal Regulations 7CFR § 273.16(b)(13) provide 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 individuals' household.

Code of Federal Regulations 7CFR § 273.16(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.

Code of Federal Regulations 7CFR § 273.16(e)(4) provides in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if an intentional program violation was committed based on clear and convincing evidence.

DISCUSSION

The Movant petitioned the Board of Review for an Administrative Disqualification Hearing (ADH) to establish that the Defendant committed an Intentional Program Violation (IPV) of the Supplemental Nutrition Assistance Program (SNAP). The Movant asserted that the Defendant committed an IPV of SNAP by intentionally failing to report that Child [REDACTED] was not a member of her household. The Movant requested the Defendant be disqualified from SNAP benefits for 12 months. The Defendant was notified of the ADH scheduling and failed to appear. Pursuant to federal regulations, the hearing was held in the Defendant's absence.

Burden of Proof

The submitted evidence revealed that the Appellant received SNAP benefits for a two-person Assistance Group (AG) from October 2022 through January 2023, and from February through May 2023. The Movant asserted that an IPV was committed, during this period, to obtain SNAP benefits for a two-person household when Child [REDACTED] was not residing with the Defendant. To prove that the Defendant committed an IPV, the Movant had to verify by clear and convincing evidence that:

- Child [REDACTED] was not a member of the Defendant's household during the asserted period;
- the DoHS notified the Defendant of her household composition reporting requirements; and

- the Defendant intentionally made false or misleading statements, or misrepresented, concealed, or withheld facts about Child [REDACTED] presence or absence in her household to obtain SNAP benefits.

Reliability of the Evidence

The Movant's determination that Child [REDACTED] resided in [REDACTED] beginning in September 2022, was based on the information the DoHS received from the [REDACTED] Department of Job and Family Services. The regulations require the agency's case files to be documented to support eligibility, ineligibility, and benefit level determinations. Documentation must be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the information.

The [REDACTED] facsimile report consisted of three pages. The cover sheet reflected a handwritten notation that Child [REDACTED] had received SNAP benefits in [REDACTED] since October 2022. The record does not reveal who completed the sheet or verify that the person had direct knowledge of the information asserted. The attached Order from [REDACTED] West Virginia, indicated a redacted name as Child [REDACTED] assigned guardian. The residence of Child [REDACTED] was not listed on the Order. The redacted [REDACTED] SNAP benefit case record did not reveal the identity of the individual receiving SNAP benefits for Child [REDACTED] during the proposed period.

The regulations stipulate that confidential information that is protected from release and other documents or records that prevent the Defendant from contesting or challenging the information are specifically prohibited from being considered by the Hearing Officer. The submitted documentation lacked sufficient detail to determine the reasonableness and accuracy of the Movant's decision regarding Child [REDACTED] residency. The Movant's decision to rely on the redacted records — as a basis for establishing Child [REDACTED] ineligibility to be included as a member of the Defendant's household — cannot be affirmed.

Household Composition

To be eligible to receive SNAP benefits, Child [REDACTED] must be a resident of West Virginia. The regulations stipulate that an individual cannot be a member of more than one SNAP AG in any month. During the hearing, the Movant's representative testified that Child [REDACTED] was the Defendant's child. The regulations provide that a person under 22 years of age living with his natural parents must be considered as customarily purchasing food and preparing meals with others, even if they do not do so, and thus may be included in the same household unless otherwise specified.

The Movant argued that Child [REDACTED] was a resident of [REDACTED] during the proposed period. To demonstrate that Child [REDACTED] should not be included in the Defendant's household, the Movant had to demonstrate by clear and convincing evidence that Child [REDACTED] was a resident of [REDACTED] not West Virginia, during the proposed period.

While the Movant asserted that Child [REDACTED] resided and received SNAP in [REDACTED] during the proposed period, without reliable corroborating records, the submitted evidence was not a sufficient basis for establishing that Child [REDACTED] should have been removed from the Defendant's AG in October 2022. As the redacted records were unreliable and no other supporting evidence

was supplied to verify that Child [REDACTED] was a resident of [REDACTED], it cannot be affirmed that Child [REDACTED] was not a member of the Defendant's household during the proposed period.

Reporting Requirements

The Movant's representative argued that the Defendant had a responsibility to report Child [REDACTED] was not a resident of her household. The regulations require SNAP recipients to report changes in their household composition within ten days. The regulations stipulate that the agency interviewer must advise the Defendant of her change-reporting responsibilities during the eligibility interview.

No case comments or other records were submitted to verify by clear and convincing evidence that the DoHS interviewer notified the Defendant of her change-reporting responsibilities before October 2022 — the onset of the proposed IPV period. The submitted records indicated the Defendant reported Child [REDACTED] as a member of her household in February 2023; however, no records were submitted to establish what communication had occurred from the Defendant to the agency before her February 2023 SNAP application. The evidence failed to clearly and convincingly demonstrate that Child [REDACTED] was not a member of the Defendant's household during the proposed period; therefore, the Movant's assertion that the Defendant was required to report Child [REDACTED] out of her home cannot be affirmed.

Intentional Program Violation

A SNAP recipient may be disqualified from SNAP eligibility for twelve months when an individual is found to have committed an IPV through an ADH. To prove that the Defendant committed an IPV to obtain SNAP during the proposed period, the Movant had to demonstrate by clear and convincing evidence that the Defendant intentionally made false or misleading statements, misrepresented, concealed, or withheld facts regarding Child [REDACTED] presence or absence in her household.

The Movant failed to prove by clear and convincing reliable evidence that Child [REDACTED] was a resident of [REDACTED] and not a member of the Defendant's household during the proposed period. The submitted evidence failed to clearly and convincingly demonstrate that the Defendant had been notified of her change reporting requirements and failed to report her household composition changes accordingly.

According to the regulations, when information is obtained that contradicts statements made by the household, the household must be afforded a reasonable opportunity to resolve the discrepancy. After the DoHS received information in May 2023, about the Defendant's household composition that was contrary to the Defendant's record, the DoHS did not provide the Respondent with an opportunity to verify her household composition.

As the Movant failed to prove that Child [REDACTED] was not a member of the Defendant's household, that the Defendant was notified of her change-reporting obligations, or that the Defendant was afforded an opportunity to rectify the reported discrepancy in her household composition, the submitted evidence failed to clearly and convincingly establish that the Defendant intentionally violated a SNAP rule by failing to report Child [REDACTED] was not a member of her household.

CONCLUSIONS OF LAW

- 1) Confidential information that is protected from release and other documents or records that the household will not otherwise have an opportunity to contest, or challenge shall not be included at the hearing or affect the hearing official's decision.
- 2) Because the submitted Order and [REDACTED] Department of Job and Family Services records were redacted, they were precluded from consideration by the hearing official.
- 3) Children under the age of 22 are required to be included in the SNAP household of their parent or person who has parental control of the child(ren) and must live in the state in which SNAP benefits are received.
- 4) The Movant failed to prove by clear and convincing evidence with whom and where Child [REDACTED] was residing for the duration of the proposed period.
- 5) The Movant failed to prove by clear and convincing evidence that Child [REDACTED] should not have been included in the Appellant's AG.
- 6) SNAP households are required to report all changes in household composition, such as the loss of a household member, within 10 days of the change.
- 7) The DoHS interviewer must advise the Defendant of her responsibilities — including the household's responsibility to report changes — during the eligibility interview.
- 8) The reliable submitted evidence failed to clearly and convincingly demonstrate that the DoHS interviewer advised the Defendant of her responsibilities to report changes.
- 9) The reliable submitted evidence failed to clearly and convincingly demonstrate that the Defendant should have reported changes in her household composition.
- 10) An intentional program violation occurs when an individual intentionally makes a false or misleading statement, or misrepresented, concealed, or withheld facts to obtain SNAP benefits.
- 11) The movant failed to prove by clear and convincing evidence that the Defendant intentionally violated a SNAP rule by failing to report Child [REDACTED] was not a member of her household.

DECISION

It is the finding of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation to receive SNAP benefits from October 2022 through May 2023.

ENTERED this 23rd day of January 2024

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