



March 27, 2024

[REDACTED]

RE: [REDACTED] v. WVDoH
ACTION NO.: 24-BOR-1462

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. 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,

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

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

cc: Sarah Ellis, IFM

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

██████████

Defendant,

v.

Action Number: 24-BOR-1462

**WEST VIRGINIA DEPARTMENT OF
HEALTH INVESTIGATIONS
AND FRAUD MANAGEMENT,**

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 Office of Inspector General Common Chapters Manual and Federal Regulations at 7 CFR §273.16. This fair hearing was convened on March 20, 2024.

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

At the hearing, the Movant appeared by Sarah Ellis, Repayment Investigator. The Defendant failed to appear. All witnesses were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Code of Federal Regulations § 273.16
- M-2 Food Stamp Claim Determination
- M-3 Witness Statement
- M-4 Witness Statement
- M-5 Letter from ██████████ Board of Education dated July 13, 2023
- M-6 Electronic Mail from School Counselor
- M-7 PRC2 dated October 18, 2021
- M-8 West Virginia Income Maintenance Manual Chapters 1.24
- M-9 West Virginia Income Maintenance Manual Chapters 11.2

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 by falsely reporting her household composition and requested that a twelve (12) month penalty be imposed against the Defendant.
- 2) The Defendant was notified of the hearing by scheduling order on February 21, 2024 to the address of [REDACTED]
- 3) The Defendant failed to appear for the hearing. In accordance with 7 CFR §§273.16 (e)(3) and 273.16(e)(4)) and West Virginia Office of Inspector General Common Chapters Manual, §740.20, the hearing was held without the Defendant in attendance.
- 4) The Defendant was a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits for an assistance group of four individuals, herself and three children.
- 5) The Defendant received SNAP for her assistance group from December 2021 through June 2022.
- 6) The Movant's Front End Fraud Unit issued a referral to the Investigations and Fraud Management unit indicating that the Defendant's daughter, [REDACTED], was not a member of the household.
- 7) [REDACTED] father provided a statement that the child had resided with him at a separate address of [REDACTED], since she attended preschool. (Exhibit M-3)
- 8) [REDACTED] is currently in 10th grade at [REDACTED] High School. (Exhibit M-3)
- 9) [REDACTED] Board of Education documents [REDACTED] address as [REDACTED]
- 10) On October 18, 2021, the Defendant completed a periodic redetermination of SNAP benefits in which she listed [REDACTED] as a resident of her household at [REDACTED]

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.

West Virginia Income Maintenance Manual § 3.2.1.A documents:

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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 composition. The Movant contends that the Defendant falsely reported her minor child as a member of her household while they resided in another residence.

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 she was not entitled.

The Movant contends that the Defendant made false statements at an October 2021 recertification for SNAP benefits when she identified her minor child, [REDACTED] as a resident of her household when the child had been residing with her father since 2015. Evidence from the [REDACTED] Board of Education documents that the child resided with her father in a separate address since 2015. Additional evidence corroborate the [REDACTED] Board of Education claim indicating the child resided with her father and not with the Defendant. Evidence did indicate that the Defendant had a visitation agreement for the child, [REDACTED] but no visitation had occurred in the last “two to three years”.

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. Therefore, it is reasonable to assume the child was not currently receiving benefits in another case at the time of the Defendant’s application and the child’s living arrangements were not questionable. Additionally, the evidence which documents a lack of visitation between the Defendant and her child does not clearly identify a timeframe for which the Defendant failed to complete visitations for her child. Therefore, it is reasonable to assume that the Defendant still maintained a visitation agreement with her child for the timeframe in which Movant contends that child resided at a separate residence.

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 daughter in the SNAP assistance group while he resided with her father at a separate residence.
- 3) 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.

- 4) Clear and convincing evidence was not provided to support the imposition of an Intentional Program Violation.
- 5) The Movant's proposal to apply an Intentional Program Violation to the Defendant's SNAP benefits cannot be affirmed.

DECISION

It is the finding of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation. The Movant's proposal to impose a 12-month IPV penalty on SNAP benefits is **REVERSED**.

ENTERED this _____ day of March 2024.

Eric L. Phillips
State Hearing Officer