



July 3, 2024

[REDACTED]

RE: [REDACTED] v. INVESTIGATIONS AND FRAUD MANAGEMENT
BOR Action No.: 24-BOR-2274

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the Administrative Disqualification 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 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,

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-2274

**WEST VIRGINIA OIG
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 June 26, 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 Respondent appeared by Sara Ellis, Repayment Investigator. The Defendant appeared pro se. 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 Statement dated May 13, 2024
- M-4 Bank Statements
- M-5 Periodic Report Form dated February 28, 2023
- M-6 Redetermination dated August 23, 2023
- M-7 Periodic Report Form dated March 19, 2024
- M-8 West Virginia Income Maintenance Manual Chapters 1.24

- M-9 West Virginia Income Maintenance Manual Chapters 11.2
- M-10 West Virginia Income Maintenance Manual Chapters 11.6.2
- M-11 Waiver of Administrative Disqualification Hearing

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 income and requested that a twelve (12) month penalty be imposed against the Defendant.
- 2) The Defendant received SNAP benefits for herself.
- 3) The Defendant received SNAP benefits from April 2023 through May 2024. (Exhibit M-2)
- 4) The Defendant has been separated from her husband for two years. (Exhibit M-3)
- 5) The Movant discovered that the Defendant had access to a joint checking account at [REDACTED] with her separated husband. (Exhibit M-3)
- 6) The Defendant provided a written statement that the joint checking account was utilized for her living expenses. (Exhibit M-3)
- 7) The checking accounts had regular deposits for the Movant's separated husband from the Social Security Administration in the amount of \$1746. (Exhibit M-4)
- 8) The Defendant completed multiple recertifications for benefits in which she indicated that the only source of income was from babysitting. (Exhibit M-5-Exhibit M-7)
- 9) The Defendant reported a checking account asset with a value of \$200.00. (Exhibit M-6)

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

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's available income. Specifically, the Movant contends that the Defendant failed to report her access to a jointly owned checking account with regular occurring deposits from the Social Security Administration.

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 failed to report a joint checking account in which she had access to her separated husband's income from the Social Security Administration. The Movant provided bank records which documented monthly deposits from the Social Security Administration. The Movant asserts that the Defendant had access to and regularly utilized the account as evidenced by checks written on the account in question. (Exhibit M-4).

The Defendant provided a written statement (Exhibit M-3) to the Movant on May 13, 2024, in which she indicated that she had access to a joint checking account with her separated husband and that the account was utilized to pay for her living expenses.

The Defendant admitted having access to the checking account but purported that her separated husband was with her when she utilized the account. The Defendant denied any intent to mislead the Movant regarding her access to the account.

Governing policy outlines in regard to deposits into a bank accounts, that the portion of the deposit intended for use of the assistance group is considered unearned income. The income in question,

from the Social Security Administration, is intended for the Defendant's husband in which she has been separated from and maintained a separate residence for two years.

To establish an IPV, the Movant must demonstrate by clear and convincing evidence that Defendant intentionally misled or withheld facts to obtain SNAP benefits for which she was not entitled. The bank account and the Defendant's utilization of the account is not questionable and should be counted as an asset for SNAP purposes. However, the Defendant reported a checking account asset at one redetermination and it is unclear if it is the same account. Additionally, while the Defendant has access to the account, there is no clear evidence to support that payments were made for the Defendant's living expenses or her separated spouse's living expenses. Therefore, the Movant's assertion that the Defendant committed an Intention Program Violation cannot be affirmed.

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 income by failing report access to a joint bank account and its available income.
- 3) Policy requires that the portion of a deposit, intended for use of an assistance group, is considered unearned income.
- 4) There is no convincing evidence to demonstrate that specific use for the bank account.
- 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

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 July 2024.

Eric L. Phillips
State Hearing Officer