



January 9, 2025

[REDACTED]

RE: [REDACTED] v. OIG/IFM
ACTION NO.: 24-BOR-3466

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 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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Jake Wegman, Esq., Assistant Attorney General

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

██████████,

Defendant,

v.

Action Number: 24-BOR-3466

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
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 ██████████ requested by the Movant on October 10, 2024. 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. The hearing was convened on December 12, 2024.

The first matter before the Hearing Officer arises from a request by Investigations and Fraud Management 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 a period of 12 months. The second matter before the Hearing Officer is whether the Movant correctly established a SNAP repayment claim in conjunction with this IPV allegation.

At the hearing, the Movant appeared by Jake Wegman, Esq., Assistant Attorney General. Appearing as witnesses for the Movant were Cecile Napisa and Christina Saunders. The Defendant was *pro se*. The witnesses were placed under oath and the following documents were admitted into evidence. The Movant's exhibits reflect corrected labeling.

Movant's Exhibits:

- D-1 Benefit Recovery Referral (screen print)
- D-2 West Virginia Income Maintenance Manual (WVIMM) excerpt
- D-3 SNAP repayment claim documentation

- D-4 Code of Federal Regulations (excerpt)
- D-5 SNAP application/review document, signed June 28, 2019
Isolated case comment entry
- D-6 School Clothing Allowance application, dated July 30, 2019
- D-7 SNAP application/review form, signed December 3, 2019
- D-8 School Clothing Allowance application, dated July 20, 2021
- D-9 SNAP application/review document, signed December 22, 2020
- D-10 SNAP application/review document, signed January 13, 2022
- D-11 Low Income Energy Assistance Program application, signed May 4, 2022
- D-12 SNAP application/review document, signed May 30, 2022
- D-13 SNAP application/review document, scanned December 2, 2022
Signature date: April 30, 2022
- D-14* Emergency Assistance application, signed March 8, 2023
- D-15* SNAP application/review document, signed May 29, 2023
- D-16 School Clothing Allowance application, signed July 3, 2023
- D-17 SNAP application/review document, signed December 1, 2023
- D-18 Front-End Fraud Unit Investigative Findings
Employee Wage Data (Bureau of Employment Programs screen prints)
Wage verification request letters
Additional screen prints
- D-19* Wage verification request letter and returned documentation, [REDACTED]
- D-20* Prior IPV query documents
- D-21 ADH correspondence and documents
- D-22 Waiver of Administrative Disqualification Hearing form
- D-23 WVIMM policy excerpt
Isolated case comment entries

Defendant's Exhibits:

None

* There may be errors in the Department's organization of these exhibits, with some elements potentially assigned to the wrong exhibit. The Department did not provide an explanation in writing or on the record. All documents were retained as provided by the Department.

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 omitting sources of household earned income to obtain additional SNAP benefits. (Exhibit D-1)
- 2) The Movant requested that a first-offense IPV penalty be imposed against the Defendant.
- 3) The Defendant has no prior IPV penalties. (Exhibit D-20)
- 4) The Movant contends that the Defendant's alleged omission resulted in excessive SNAP benefits to be issued to the Defendant's household in the amount of \$39,903, for the period from July 2019 through December 2023. (Exhibit D-3)
- 5) The Movant proposes a \$39,903 SNAP repayment claim be established against the Defendant's household. (Exhibit D-3)
- 6) The Defendant was present for the hearing and the issue of SNAP repayment was heard in addition to the IPV determination.
- 7) The Defendant was a recipient of SNAP benefits with a household size which fluctuated from four (4) to three (3) within the claim period. (Exhibit D-3)
- 8) The father of the Defendant's children, [REDACTED], was included in the Defendant's SNAP household and assistance group (AG) throughout the claim period.
- 9) The Defendant's daughter, [REDACTED], was born on [REDACTED], and turned 18 on [REDACTED].

- 10) The Defendant signed multiple application or review documents for SNAP or related programs affecting SNAP eligibility (Exhibits D-5 through D-17), affirming that her statements were true.
- 11) The Defendant withheld income sources, explicitly reported zero income, or denied the onset of new employment on these documents. (Exhibits D-5 through D-17)
- 12) The Movant obtained earned income verification (Exhibit D-19) for [REDACTED] from one of his employers.
- 13) The Movant obtained data exchange income verification (Exhibit D-18) for the remainder of [REDACTED] earnings, and all sources of income for [REDACTED]
- 14) The Movant sent the Defendant the Advance Notice of Administrative Disqualification Hearing Waiver form and the (Exhibit D-21) Waiver of Administrative Disqualification Hearing form (“ADH waiver”).
- 15) The Defendant signed and returned the ADH waiver, opting to proceed to hearing. (Exhibit D-21)

APPLICABLE POLICY

Code of Federal Regulations 7 CFR §273.16 explains Administrative Disqualification Hearing procedures:

273.16(c) Definition of an Intentional Program Violation

Intentional Program Violations consist of having intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts; or committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards.

273.16(b) Disqualification Penalties

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:

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;

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 permanently for the third occasion of any Intentional Program Violation.

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.

Code of Federal Regulations 7 CFR §273.18 explains SNAP repayment claims:

§ 273.18 Claims against households.

(a) General.

(1) A recipient claim is an amount owed because of:

- (i) Benefits that are overpaid or
- (ii) Benefits that are trafficked. Trafficking is defined in 7 CFR 271.2.

(2) This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations.

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections similar to recent national rates of collection. If you do not meet these standards, you must take corrective action to correct any deficiencies in the plan.

(4) The following are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred;
- (ii) A person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.

(b) Types of claims. There are three types of claims:

An . . .	is . . .
(1) Intentional Program violation (IPV) claim	any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in § 273.16.
(2) Inadvertent household error (IHE) claim	any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.
(3) Agency error (AE) claim	any claim for an overpayment caused by an action or failure to take action by the State agency.

Code of Federal Regulations 7 CFR §273.9(c)(7) explains the treatment of earned income for children:

(7) The earned income (as defined in paragraph (b)(1) of this section) of any household member who is under age 18, who is an elementary or secondary school student, and who lives with a natural, adoptive, or stepparent or under the parental control of a household member other than a parent. For purposes of this provision, an elementary or secondary school student is someone who attends elementary or secondary school, or who attends classes to obtain a General Equivalency Diploma that are recognized, operated, or supervised by the student's state or local school district, or who attends elementary or secondary classes through a home-school program recognized or supervised by the student's state or local school district. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded.

WV IMM, Chapter 1, §1.2.4: It is the client's responsibility is to provide complete and accurate information about his circumstances so that the Worker is able to make a correct determination about his eligibility.

WV IMM, Chapter 11, §11.2.3.B, in part: 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. An IPV can only be established in the following ways:

- The client signs an IG-BR-44, Waiver of Rights to an ADH
- By an ADH decision
- By Diversionary Consent Agreement
- By court decision

Once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV.

DISCUSSION

The Movant requested the Defendant be disqualified from SNAP benefit eligibility for 12 months because she committed an Intentional Program Violation (IPV) by omitting sources of household income on SNAP application and review documents, and documents for related programs which affect SNAP eligibility factors.

An IPV is defined by state and federal regulations as false or misleading statements, or misrepresented, concealed or withheld facts which are made in relation to acquiring SNAP benefits. An individual who is found to have committed an IPV is disqualified from participation in SNAP. The Movant bears the burden of proof to demonstrate by clear and convincing evidence that the Defendant committed an IPV. This is the first issue to be decided.

The Defendant was present for the hearing. Because the Movant is proposing a corresponding SNAP repayment claim in conjunction with the alleged IPV, the second issue to be decided is whether the Movant's proposed SNAP repayment claim is correct. The Movant must show, by preponderance of the evidence, that it correctly established the SNAP claim type (i.e., agency error, client error, or fraud) and dollar amount.

The Movant calculated a \$39,903 SNAP repayment for overissued benefits from July 2019 through December 2023. This claim is based on unreported earned income within the Defendant's household. The unreported earned income is from two sources: [REDACTED] – father of the Defendant's children – and the Defendant's adult daughter, [REDACTED].

The Movant attempted to verify earned income from various employers for [REDACTED]. One employer provided limited earned income verification for [REDACTED]. All other uncounted earned income sources were estimated using quarterly wage data obtained from the West Virginia Bureau of Employment Programs (BEP). BEP wage data shown for an individual in a particular quarter, especially for small amount, does not establish that the income was continuous throughout the quarter, or that it even continued from the month of onset into the first month it would be countable for SNAP purposes. BEP wage data was also available to the eligibility workers assigned to the Movant's case throughout the proposed claim period in the form of a data exchange between the agencies. Either worker neglect or failure of the data exchange is agency error, not fraud, and both the repayment question and the IPV question are complicated by agency errors throughout the claim period.

However, the Defendant signed multiple false statements and testified at the hearing that she did not report earned income. The Defendant signed numerous applications for SNAP and related programs (where reported factors for those programs affect the ongoing eligibility for SNAP) omitting the income of [REDACTED]. The Defendant testified that she did report this income *initially*, and provided convincing testimony that she had to have the employer fill out a form and provided pay stubs twice. The Defendant also testified that she stopped reporting earned income sometime around the end of 2019, confirming the false statements made on application and review documents presented by the Movant.

Because of the dollar amount and duration of the excessive SNAP benefits, and the false statements established in evidence and testimony, the Movant has correctly determined the Defendant committed an IPV. The Movant uses a national database (eDRS) to determine the IPV count for any individual, and the Defendant has no prior IPVs. The disqualification period for a first-offense IPV is 12 months. The Movant's proposal to establish a first-offense IPV against the Defendant is affirmed, with the disqualification period to begin in February 2025.

The second issue, to establish a SNAP repayment claim as a fraud claim for \$39,903, is less clear. Movant witness testimony was insufficient and unclear regarding many claim factors. Throughout the claim period, the Movant added an individual back into the Defendant's SNAP assistance group (AG) – for the corrected benefit level calculation – without explanation. It is unclear which individual this was, or why they were added back into the benefit calculation. The SNAP benefit issuance history for the Defendant shows two monthly issuances for many months in the claim period. This could be the result of a regular SNAP issuance and a corrective auxiliary in each of those months, but the detail was unexplained by testimony and only further confused by what documentation was available. The Movant provided screen prints of case comments from the Defendant's case, but only for the excerpted dates it chose, effectively omitting all other comments that may have supported its claim calculation.

Fortunately for the Movant, its standard of proof for the repayment claim is lower, and it is more likely than not that the \$39,903 claim is correct. All claim months are established as “totally ineligible” months, or months where the corrected SNAP level is zero because of excessive gross income or net income. These thresholds increase and decrease with household size, so if the Movant established the Defendant's household as totally ineligible in a given month with a given AG size, the same household would always be totally ineligible with a *lower* AG size and income limits. The limitations of quarterly income verification have been addressed, but there was neither testimony nor evidence from the Defendant to refute the Movant's income amounts. The agency errors pervasive throughout the claim period are outweighed by the explicit false statements of the Defendant. The Movant's determination of a \$39,903 SNAP fraud claim is affirmed.

Based on the reliable evidence and testimony at the hearing, the Movant proved by clear and convincing evidence that the Defendant committed actions that meet the definition of an IPV. The Movant proved by preponderance of the evidence that it correctly established a corresponding \$39,903 SNAP repayment claim for the benefits obtained as a result of the Defendant's IPV.

CONCLUSIONS OF LAW

- 1) Because the Defendant signed multiple application or review documents for SNAP or related programs, she is responsible for the veracity of the statements therein.
- 2) Because the Defendant omitted income sources for household members on those documents, her actions meet the IPV definition.
- 3) Because this IPV is the Defendant's first IPV, a 12-month SNAP disqualification penalty must be imposed.
- 4) Because the Defendant's IPV resulted in the issuance of \$39,903 in excessive SNAP benefits to the Defendant's household, the Movant must pursue benefit recovery through the establishment of a \$39,903 SNAP fraud claim.

DECISION

The State Hearing Officer finds that the Defendant committed a first-offense IPV. It is hereby **ORDERED** that a twelve-month SNAP disqualification penalty be imposed, effective February 1, 2025. The decision of the Movant to establish a corresponding \$39,903 SNAP repayment claim is additionally affirmed.

ENTERED this _____ day of January 2025.

**Todd Thornton
State Hearing Officer**