



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Bob Wise
Governor

Paul L. Nusbaum
Secretary

January 11, 2005

Dear Ms. _____ :

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held December 6, 2004.

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.

Intentional Program Violations shall consist of having intentionally: (1) made a false or misleading statement or misrepresented, concealed or withheld facts or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute relating to the use presentation, transfer, acquisition, receipt or possession of Food Stamp coupons. Individuals found to have committed an act of Intentional Program Violation will be ineligible for a specified time determined by the number of previous Intentional Program Violation disqualifications. (West Virginia Income Maintenance Manual § 20.2 and Code of Federal Regulations-7 CFR § 273.16)

Information submitted at the hearing revealed that you initially failed to report the onset of your son's Social Security income, and when you did report it, you failed to disclose the full amount. By intentionally withholding information about your household income, you received Food Stamp benefits to which you were not entitled.

It is the decision of the State Hearing Officer that you committed an Intentional Program Violation and a disqualification penalty of one (1) year will be applied. This disqualification will begin March 1, 2005.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Teresa Smith, SRI, DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an administrative disqualification hearing concluded on January 11, 2005 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This hearing was convened on December 6, 2004.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The **Food Stamp Program** is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources. The purpose of the Food Stamp Program is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of an EBT card to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

Teresa Smith, SRI, DHHR

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in the Food Stamp Program.

V. APPLICABLE POLICY:

7 CFR § 273.16 USDA Code of Federal Regulations

Common Chapters Manual Chapter 700, Appendix A

West Virginia Income Maintenance Manual Sections 1.2, 1.4, 10.3 and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 Food Stamp application form with Rights and Responsibilities signed and dated by the Defendant on August 22, 2003, along with screening form dated August 11, 2003
- D-2 Food Stamp redetermination form with Rights and Responsibilities signed and dated by the Defendant on January 7, 2004
- D-3 Food Stamp redetermination form with Rights and Responsibilities signed and dated by the Defendant on July 20, 2004
- D-4 Rapids case comments dated August 22, 2003 through July 21, 2004
- D-5 Copy of Rapids RSDI Information Response screen
- D-6 Food Stamp Claim Determination form
- D-7 Notification of Intent to Disqualify dated July 30, 2004
- D-8 West Virginia Income Maintenance Manual Sections 1.2, 1.4, 10.3 and 20.2, along with Common Chapters Manual Chapter 700, Appendix A

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) A request for an Administrative Disqualification Hearing was received by the Board of Review from the Department's Repayment Investigation Unit. The Department contends that the Defendant has committed an Intentional Program Violation and is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of 12 months.
- (2) Notification of the December 6, 2004 hearing was sent to the Defendant via first-class mail on October 26, 2004 as the Defendant is a current recipient of benefits through the Department.
- (3) The hearing convened as scheduled at 10:00 a.m., and by 10:15 a.m., the Defendant failed to appear. As set forth in regulations [7 CFR 273.16 (e) (4)], and State Policy (700 of Common Chapters Manual Appendix A Part F), the hearing was conducted without the Defendant in attendance.
- (4) The Defendant completed an application for Food Stamp benefits on August 22, 2003. There were three (3) individuals in the Assistance Group (AG) and zero income was reported.
- (5) The Defendant completed a Food Stamp redetermination on January 7, 2004 (D-2), reporting herself and her son, _____, in the household. The income reported included the Defendant's earnings from Winans, as well as \$11 in Social Security benefits for _____.
- (6) On July 20, 2004, the Defendant completed a Food Stamp redetermination (D-3). She reported her income from Winans and indicated that _____'s Social Security benefits had increased to \$814 monthly.
- (7) A Rapids query screen (D-5) reveals that _____ was receiving \$11 in Social Security benefits when the initial application was completed in August 2003, and that it had increased to \$477 in September 2003, to \$798 for October 2003 and to \$814 for December 2003.
- (8) The Defendant failed to report the onset of Social Security income during the initial application in August 2003 (\$11), and when the income (\$11) was reported in January 2004, it had increased to \$814. The Defendant did not report the \$814 Social Security income until her review in July 2004.
- (9) The Defendant marked "yes" to the requirements in the Rights and Responsibilities (DFA-RR1) sections included in Exhibits 1, 2 and 3 and her signature is found on those documents.
- (10) A Food Stamp Claim Determination form (D-6) shows a loss to the Food Stamp Program of \$1,749 for the

period of September 2003 through July 2004.

- (11) Notification of Intent to Disqualify dated July 30, 2004 (D-7) was sent to the Defendant, however, the Defendant failed to respond, according to the Department.
- (12) West Virginia Income Maintenance Manual § 1.2 (E) (D-8) states that it is the client's responsibility to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- (13) West Virginia Income Maintenance Manual § 10.3, TTT (D-8) states that Social Security benefits are considered countable unearned income for the Food Stamp Program.
- (14) West Virginia Income Maintenance Manual § 20.2 (D-8):
When a benefit group has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.
- (15) West Virginia Income Maintenance Manual § 20.2 C (2):
Once an IPV (Intentional Program Violation) is established, a disqualification penalty is imposed on the AG (assistance group) members who committed the IPV.
The penalties are as follows: (§ 9.1, A, 2, g) 1st Offense: 1 year (Disqualification)
- (15) West Virginia Income Maintenance Manual § 20.2 C (2):
IPVs (Intentional Program Violations) include making false or misleading statements, misrepresentations, the concealment or withholding of facts and committing any act that violates the Food Stamp Act of 1977, Food Stamp Regulations or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.
- (16) 7 CFR § 273.16 (e) (6) Code of Federal Regulations:
The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an Intentional Program Violation.

VIII. DECISION:

Policy provides that an Intentional Program Violation (IPV) for purposes of the Food Stamp Program will include the making of false or misleading statements, misrepresentations or the concealment or withholding of facts in attempting to secure Food Stamp benefits.

Evidence is clear that the Defendant intentionally misrepresented her household situation by withholding information necessary in determining her eligibility for Food Stamps. By intentionally withholding this information, the Defendant received an over issuance of Food Stamp benefits. The withholding or concealment of information to secure benefits constitutes a clear violation of the regulations. Based on evidence presented, I find the violation intentional.

The Agency's request for a one (1)- year disqualification is **upheld**, with the disqualification period beginning in March 2005.

Only the Defendant is subject to this disqualification.

IX. RIGHT OF APPEAL:

See Attachment

X. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29