



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 West Washington Street
Charleston, West Virginia 25313

Joe Manchin III
Governor

Secretary

February 16, 2005

Dear Mr. _____;

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held January 7, 2005.

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.

For the purpose of determining, through an administrative disqualification hearing, whether or not a person has committed an intentional program violation, the following criteria will be used: Intentional program violation shall consist of having (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 regulations, or any statute relating to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamp coupons. (Section B. Appendix A, Chapter 700 of Common Chapters Manual) Individuals found to have committed an intentional program violation shall be ineligible to participate in the Food Stamp Program for a fixed period of time as explained in section 9.1 (A)(2)(f) of the WV Income Maintenance Manual and 7 CFR Section 273.16).

The information submitted at the hearing revealed that: You failed to report earned income in a timely manner. This resulted in an over issuance of \$5,072.00 in Food Stamp Benefits. The overpayment period covers July 2003 through October 2004.

It is the decision of the State Hearing Officer, to uphold the Department's proposal, that you did commit an Intentional Program Violation. You will be sanctioned from the Food Stamp Program for a period of twelve (12) months. The sanction will be effective April 2005.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Brian Shreve, Repayment Investigator

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: _____

ADDRESS: _____

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 February 16, 2005.

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 administrative disqualification hearing was originally convened on January 7, 2005, on a timely appeal filed by the Department on November 24, 2004.

It should be noted here that, the defendant is a current recipient of Food Stamp Program Benefits.

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 food coupons to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS

_____, Defendant

_____, Spouse

Brian Shreve, Repayment Investigator

Presiding at the hearing was, Ray B. Woods, Jr., M. L. S., State Hearing Officer and; a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

The question to be decided is whether it was shown by clear and convincing evidence that the defendant, _____, committed an intentional program violation.

V. APPLICABLE POLICY

Common Chapters Manual, Chapter 700, Appendix A, Section B and; WV Income Maintenance Manual Section 9.1 (A)(2)(f)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

- D ADH Hearing Summary
- D-1 Code of Federal Regulations §273.16 – DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION
- D-2 Benefit Recovery Referral dated 09/20/04
- D-3 Food Stamp Claim Determination
- D-4 Case Comments 08/23/04 – 09/20/04
- D-5 Employment Verification Letter dated 10/07/04
- D-6 Combined Application and Review Form dated 10/09/03
- D-7 Case Comments 08/05/03 – 10/20/03
- D-8 OFA-RFA-1 (Registration for Benefits) dated 10/09/03
- D-9 DFA-LIEAP-1 (LIEAP Application) dated 01/14/04
- D-10 Case Comments 01/14/04 – 07/23/04
- D-11 DFA-WVSC-1 (SCA Application) dated 07/23/04
- D-12 WVIMM Chapter 1.2 E CLEINTRESPONSIBILITY
- D-13 WVIMM Chapter 2.2 B (1) TIMELY REPORTING AND FOLLOW-UP
- D-14 WVIMM Chapter 20.2 FOOD STAMP CLAIMS AND REPAYMENT PROCEDURES
- D-15 WVIMM Chapter 20.6A REFERRALS TO THE CRIMINAL INVESTIGATIONS UNIT – DEFINITION OF WELDFARE FRAUD
- D-16 Notification of Intent to Notify with attachment dated 10/26/04
- D-17 IG-BR-30; IG-BR-31 & IG-BR-44

VII. FINDINGS OF FACT

- Mr. Shreve submitted the following ADH Hearing Summary:

I. IDENTIFYING INFORMATION

NAME: _____ & _____ ADDRESS: _____ AGE: 42 & 35
CASE #: _____

WORKERS INVOLVED DURING PERIOD IN QUESTION: Crystal Sutphin, Sheila Napier, Eric Folio & Ona Roberts.

II. CASE DATA

DATE OPENED: September 20, 2002 DATE CLOSED: Still Active
OVERPAYMENT PERIOD: July 2003 to October 2004
AMOUNT OF FOOD STAMPS OVER ISSUED: \$5072.00
ELIGIBILITY FACTOR INVOLVED: Timely Reporting, Earned Income.

III. SUMMARY OF FACTS

The WV DHHR has requested this hearing be held for the purpose of determining that _____ & _____ committed an IPV. The Federal Register Section 273.16C defines an IPV as (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 regulations or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of FS coupons or ATP's.

The IFM unit received a referral from the IM unit that the customers had failed to report Mrs. _____'s employment & earned income from Bob Evans. Because the earned income was not reported in a timely manner the FS were over issued from July 2003 to October 2004, totaling \$5072.00.

On August 23, 2004, The _____ DHHR office received information that _____ was working for Bob Evans. The in September 2004 after income verification was received, repayment referral was made. When I worker up the claim in October 2004. I sent a letter to the employer, Bob Evans, to verify employment and wages. Bob Evans responded and verified that _____ had started to work for them on may 15, 2003. According to our _____ records the earned income had not been reported prior to it was discovered on August 23, 2004.

As to intent: The customers have several opportunities to report Mrs. _____ earned income. On October 09, 2003 during a food stamp review. Customer reported the only income as Mr. _____ SSA disability income & SSI. Then on January 14, 2004, Customer applied for Emergency LIEAP & again only reported Mr. _____ SSA disability income & SSI. On July 20, 2004, on a WV SCA application only Mr. _____ SSA disability income & SSI was reported. On none of these occasions did the customers report Mrs. _____ earned income.

IV. RIGHTS AND RESPONSIBILITIES: EVALUATION OF CLIENT'S UNDERSTANDING OF AGENCY POLICY AND RECOMMENDATION

_____ have received benefits since September 2002. During that time several applications have been completed. Several times they have read or had read to them the rights & responsibilities & affixed their signature accepting the responsibilities thereof.

Section 1.2.E of the IM manual states: "The client's responsibility is to provide information about his/her circumstances so the worker is able to make a correct decision about

his/her eligibility". Mr. & Mrs. ____ have failed to do so by failing to report her earned income. Therefore, the case worker was unable to make a correct decision as to their eligibility.

Section 2.2.B of the IM manual states all changes are to be reported within 10 days. This is considered timely reporting which they failed to do.

Section 20.2 of the IM Manual states: When an AG has been issued more FS than entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or Intentional Program Violation (IPV) claim. The claim amount is the difference between the entitlement the AG actually received and the entitlement the AG should have received.

Section 20.6A of the IM manual states in the last paragraph: "Likewise; it is not essential that an affirmative representation be made. Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false".

The department recommends that ____ be sanctioned for 1 year for an IPV in compliance with Federal Register 273.16C. Also that repayment be made in accordance with section 20.2, which states all or in part: By benefit reduction, Lump sum payment or monthly payments. In the event the claim is delinquent it will be subject to tax intercept. All liable debtors are held equally responsible.

- Mr. and Mrs. ____ agreed to combine their respective scheduled hearings. They were advised by the State Hearing Officer that, they were not required to provide testimony. If they chose not to provide testimony, the decision would be based solely on the information provided during the hearing.

- Mr. Brian Shreve referred to comments made by a Worker not present for cross-examination. The State Hearing Officer explained the "Hearsay Rule" to Mr. and Mrs. _____. If they objected, the reference would not be considered in the final decision. The ____ did not object to the Workers comments.

- Mrs. ____ believed she submitted the necessary pay stubs. There was some confusion about reporting information to the US Social Security Administration and the WV Department of Health and Human Resources.

- Mr. ____ believed they made an honest mistake by not reporting the earned income to the Department. Mr. ____ left the hearing before it concluded.

- The State Hearing Officer rendered a decision at the conclusion of the hearing.

VIII. CONCLUSIONS OF LAW

1. According to Common Chapters Manual, Chapter 700, Appendix A, Section B, an intentional program violation consists of having intentionally made a false statement, or misrepresented, concealed or withheld facts, or committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons.

2. According to policy at WV Income Maintenance Manual Section 9.1 (A) (2) (f) the disqualification penalty for having committed an Intentional Program Violation is twelve months for the first violation, twenty-four months for the second violation, and permanent disqualification for the third violation.

IX. DECISION

It is the decision of this State Hearing Officer that, _____ committed an Intentional Program Violation. Based on the information submitted at the hearing, Mr. _____ failed to report information that would affect his Food Stamp Benefits.

Mr. _____ will be sanctioned from the Food Stamp Program for a period of twelve (12) months and, must repay \$5,072.00 in over issued Food Stamp Benefits.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29