

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 April 26, 2005 for Mrs. _____. 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 fair hearing was convened on March 4, 2005 on a timely appeal, filed December 6, 2004

It should be noted here that Mrs. _____'s household is currently receiving Food Stamp Benefits.

A pre-hearing conference was not held between the parties. Mrs. _____ did not have legal representation in this particular matter.

All parties agreed to provide truthful information during the hearing

II. PROGRAM PURPOSE:

The Program entitled FOOD STAMPS is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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

Brian Shreve, Repayment Investigator - Boone District DHHR Office

Steve Hill, Economic Services Worker – Boone District DHHR Office

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. QUESTIONS 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:

Department' Exhibits:

- D-1 Code of Federal Regulations 273.16 DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION
- D-2 Benefit Recovery Referral dated 11/18/04
- D-3 Food Stamp Claim Determination
- D-4 BEP Wage Details Printout
- D-5 Letter requesting wage information dated 10/07/04
- D-6 Letter requesting wage information dated 10/26/04 – 2nd request
- D-7 Application dated 08/05/02
- D-8 Case Comments dated 08/05/02 – Excluded
- D-9 Application dated 06/30/03
- D-10 Case Comments dated 06/30/03
- D-11 Case Comments dated 10/08/03 – Excluded
- D-12 Regular LIEAP Application dated 10/09/03
- D-13 Emergency LIEAP Application dated 01/28/04
- D-14 Case Comments dated 01/28/04 – 05/03/04
- D-15 WVIMM Chapter 1.2 E – CLIENT RESPONSIBILITY
- D-16 WVIMM Chapter 2.2 B REPORTING REQUIREMENTS
- D-17 WVIMM Chapter 20.2 FOOD STAMP CLAIMS AND REPAYMENT PROCEDURES
- D-18 WVIMM Chapter 20.6 A REFERRALS TO THE CRIMINAL INVESTIGATIONS UNIT – DEFINITION OF WELFARE FRAUD
- D-19 Notification of Intent to Disqualify dated 11/22/04
- D-20 ADH Hearing Summary
- D-21 Letter re: Social Security Wages dated 03/04/05
- D-22 Social Security Statement – _____
- D-23 IG-BR-30, 31 and 44

Defendant's Exhibits:

None

VII. FINDINGS OF FACT:

1) Mr. Shreve submitted the following Administrative Disqualification Hearing Summary:

I. IDENTIFYING INFORMATION

NAME: _____ ADDRESS: _____; Ottawa WV 25149

AGE: 55

CASE #: _____

WORKERS INVOLVED DURING PERIOD IN QUESTION: L. Henson, S. Hill, R. Pavelka & M. Stowers.

II. CASE DATA

DATE OPENED: September 1998 DATE CLOSED: Still Active

OVERPAYMENT PERIOD: August 2002 to July 2004

AMOUNT OF FOOD STAMPS OVER ISSUED: \$5828.00

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 information that the customer had failed to report her husband's earned income. Because the earned income was not reported in a timely manner the FS were over issued for the September 2002 to July 2004, totaling \$5828.00.

The IFM unit received a complaint about the customer. While checking the complaint it was discovered the customer's husband, _____ had been working for Southern Kitchen. RI sends two letters to the business to verify _____'s employment and wages. The employer did not reply to either letter. RI had to use BEP's wage work

quarter match to determine the income per quarter to work up the amount of the food stamp claim. Based on the BEP wage quarter match, Mr. _____ has worked continuously for Southern Kitchen since the 2nd quarter of 2002. None of Mr. _____'s income from his employment at Southern Kitchen was reported.

As to intent: Mrs. _____ had at least 4 opportunities to report _____'s earned income. On August 05, 2002, Mrs. _____ came in to reapply for a food stamps. Only income reported was _____'s earned income from Southern Kitchen and her SSI and Social Security income. Then on June 30, 2003 doing a food stamp review she reported no income for _____ and even reported him out of the home. Then on October 08, 2003, she called the change center and reported _____ had only been out of the home for six (6) days in June 2003. Nothing about _____ working or his earned income. On October 22, 2003 a mail in LIEAP application was received and only income reported was _____'s SSI & Social Security income. Then on January 28, 2004, Mrs. _____ came in to apply for Emergency LIEAP and only income reported again was her SSI & Social Security income. She even reported that _____ was unemployment.

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

_____ has received benefits on & off since 1998 and continuously since 2001. During that time numerous applications have been completed.

Numerous times she has read or had read to her the rights & responsibilities & affixed her 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". Mrs. _____ has failed to do so by failing to report the earned income. Therefore, the case worker was unable to make a correct decision as to her 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 Mrs. _____ 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 is 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.

2) Mrs. _____ disagreed with the amount of earned income. The State Hearing Officer requested Mr. Shreve to obtain a copy of Mr. _____'s Social Security earnings and compare them with the BEP Wages.

3) Mr. Shreve forwarded a response to the State Hearing Officer on March 4, 2005 with a copy sent to Mrs. _____. The letter stated in part,

“I only compared 2002 and 2003 because those were the only two years were informed of overpayment. The Social Security Administration listed _____'s earnings for 2002 as being \$6,433.00. The WV BEP wage match listed _____'s earnings as \$6,432.85. Social Security had Mr. _____ earning \$10,051.00 for 2003. WV BEP had Mr. _____'s earnings for 2003 as \$10,051.50. The only difference is that the Social Security Administration rounded up in 2002 and rounded down in 2003. The small difference in the amounts between Social Security and WV BEP will not change the amount of food stamps owed by the customers.”

4) Mrs. _____ objected to Exhibits D-8 & D-11 after the “Hearsay Rule” was explained. They were excluded from consideration. Mr. Shreve called Mr. Steve Hill, an Economic Services Worker, as the author of the remaining Case Comments.

5) Mr. Shreve used the correct income to determine the overpayment of Food Stamp Benefits.

6) Mrs. _____ failed to report the correct household income. This resulted in an over issuance of Food Stamp Benefits in the amount of \$5,828.00.

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, Mrs. _____ failed to report information that would affect her Food Stamp Benefits.

Mrs. _____ will be sanctioned from the Food Stamp Program for a period of twelve (12) months and, must repay \$5,828.00 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