



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
150 Maplewood Avenue  
Lewisburg, WV 24901  
Telephone (304) 647-7476 Fax: (304) 647-7486

Joe Manchin III  
Governor

February 18, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held February 3, 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 20.2(D)(2)(e) of the WV Income Maintenance Manual and 7 CFR Section 273.16

The information submitted at your hearing revealed that you failed to report your husband residing in the home and his wages.

It is the ruling of the State Hearing Officer that you did commit an Intentional Program Violation. You will be disqualified from participation in the Food Stamp Program for twelve months beginning April, 2005.

Sincerely,

Margaret M. Mann  
State Hearing Officer  
Member, State Board of Review

cc: Board of Review  
Kathy Carr, 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 3, 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 originally convened on February 3, 2005. This hearing had been scheduled for September 1, 2004. The certified appointment letter had been returned as "unclaimed". The State Hearing Officer was informed that the defendant had an active case for other benefits so the hearing was rescheduled for December 13, 2004. This hearing date was then rescheduled for February 3, 2005 because of inclement weather. The appointment letters for December 13, 2004 and February 3, 2005 were sent to the defendant at her current address as listed in the active RAPIDS file. The defendant did not appear for the hearing.

It should be noted here that the defendant is not a current recipient of food stamp 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**

Kathy Carr, Repayment Investigator

The defendant failed to appear after being given proper and timely notice of the hearing.

The hearing was held via a conference call.

Presiding at the hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION 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, reads in part:**

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.

**Section 20.2 of the West Virginia Income Maintenance Manual reads in part:**

When an AG has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the entitlement the AG received and the entitlement the AG should have received.

### **7 CFR § 273.16 (c) Definition of Intentional Program Violation**

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 for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

### **7 CFR § 273.16 (e) (6) Criteria for determining Intentional Program Violation.**

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, Intentional Program Violation as defined in paragraph (c) of this section.

## VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

DHHR Exhibit-1) Copy of completed application form, along with signed Rights & Responsibilities, dated 12/16/2002

DHHR Exhibit-2) Copy of case comments dated 06/11/2003 and 10/01/2003

DHHR Exhibit-3) Copy of Data Exchange Query for SSI information

DHHR Exhibit-4) Copy of Income Maintenance Manual section 20.2

DHHR Exhibit-5) Copy of Food Stamp Claim Determination Form

DHHR Exhibit-6) Copy of appointment letters for 03/11/2004 along with return receipt for certified letter

DHHR Exhibit-7) Fair Hearing Summary

## VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### **A. Findings of Fact:**

1. The Investigation and Fraud Management Unit received a referral from the Income Maintenance Unit regarding the over issuance of food stamps that occurred due to the client failing to report \_\_\_\_\_ as a household member and failing to report his wages.

2. The defendant signed a food stamp application and Rights & Responsibilities dated 12/16/2002 (DHHR Exhibit-1). Rights & Responsibilities #6, #32, #42 and #44 signed by the defendant state in part:

#6) would be disqualified from receiving Food Stamp benefits if she is found to have committed an act of

intention program violation.

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#31) that she did agree to notify the DHHR office when anyone moves in or out of her household.

#42 ) understands if she gives incorrect or false information or if she fails to report changes that she may be required to repay benefits she received.

#44) certifying that all the information she had given was true and correct and she accepts these responsibilities.

3. Case comments dated 06/11/2003 reflect action taken on the defendant's food stamp case due to data exchange from the Social Security Administration (DHHR Exhibit-3) of a decrease in the defendant's SSI benefits due to husband's (Michael) wages. (DHHR Exhibit-2)

4. Case comments dated 10/01/2003 reflect that the worker received information that Michael had been in the home over a year and the defendant's SSI payment had decreased due to Michael's wages. (DHHR Exhibit-2)

5. The defendant failed to keep an appointment on 03/11/2004 with the repayment investigator to discuss facts of the investigation.

6. The failure of the defendant to report correct household composition and income has resulted in an over issuance of food stamps in the amount of \$2,198.00 for the period of April, 2003 through October, 2003. (DHHR Exhibit-5)

## **B. Conclusions of Law:**

1. Policy states that "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 for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device)."

2. Un-refuted testimony shows the defendant did not report her husband residing in the home and working. She did not list him on an application dated 12/16/2002. In June, 2003, a data exchange printout from the Social Security Administration showed the defendant's SSI had decreased due to her husband's wages. The worker later received information that the husband had been in the home over a year.

3. The defendant was overpaid \$2,198.00 in food stamps as a result of not reporting her correct household composition and earnings.

4. Policy dictates that the IPV claim is the difference between the entitlement the AG received and the entitlement the AG should have received.

## **VIII. DECISION**

After reviewing the information presented during the hearing and the applicable policy and regulations, it is the finding of the State Hearing Officer that the failure of the defendant to report her husband residing in the home and his wages constitute an intentional withholding and she did commit an Intentional Program Violation. The defendant will be disqualified for twelve months beginning April, 2005. Repayment will be initiated as policy dictates.

## **IX. RIGHT OF APPEAL**

See Attachment.

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**X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.