



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 7, 2005

_____ and _____

Moundsville, WV 26041

Dear Ms. _____ and Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your Administrative Disqualification Hearing held March 22, 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.

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 intentionally withheld information about your income. As a result, you received Food Stamp benefits for which you were not eligible. The withholding or concealment of information to secure Food Stamp benefits constitutes a clear violation of the Food Stamp regulations.

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 June 1, 2005.

Sincerely,

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

cc: Chairman, Board of Review
Teresa Smith, SRI, Department of Health and Human Resources

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

_____ and

Moundsville, WV 26041

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an Administrative Disqualification hearing concluded on April 7, 2005 for _____ and _____. 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 convened on March 22, 2005.

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:

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 is whether the Defendants 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 App A
West Virginia Income Maintenance Manual Chapter 1.2, 2.2, 10.3, 10.4 & 20

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- DHS-1 Combined Application and Review Form signed by the Defendants on 9/15/04
- DHS-2 Case Comments from 9/15/04 thru 9/28/04
- DHS-3 Notice of Decision dated 9/16/04 & 9/29/04.
- DHS-4 Workers Compensation Payment Verification, June 2004 thru December 2004, For _____.
- DHS-5 Food Stamp Claim Determination for the period September 2004 thru December 2004.
- DHS-6 Notification of Intent to Disqualify for _____ and _____ dated January 13, 2005.
- DHS-7 WV Income Maintenance Manual, Chapter 1.2, 1.4, 9.1, 10.3, 20.2 and Common Chapters Manual Chapter 700, Appendix A..

VII. FINDINGS OF FACT:

- (1) A request for an Administrative Disqualification Hearing was received by the Board of Review from the Department's Repayment Investigation Unit on January 26, 2005. The Department contends _____ and _____, hereinafter Defendants, committed an Intentional Program Violation and is recommending that they be disqualified from participation in the Food Stamp Program for a period of 12 months.
- (2) Notification of the March 22, 2005 hearing was mailed to each of the Defendants on February 9, 2005 via First Class mail as the Defendants are at an address known to be good by the Department.
- (3) The hearing convened as scheduled at 10:00 a.m. As of 10:15 a.m., the Defendants 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 Defendants in attendance.
- (4) The Defendants completed and signed a Combined Application and Review form (DHS-1) for Food Stamp benefits on September 15, 2004. By placing their signature on the last page of the application, they certified that their statements are true and correct and acknowledge that they understand it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits to which they are not by law entitled. Page 8 of the application reveals that the only income reported by the Defendants is \$140 monthly HUD Utility Allowance.
- (5) The Defendants signed page 8 of the Rights and Responsibilities (DHS-1) on 9/15/04 and marked "yes" to #47 indicating that – "I certify that all statements on this form have been read by me or read to me and that I understand them. I certify that all the information I have given is true and correct and I accept these responsibilities." The Defendants also marked "yes" to # 6, #7 & 8 acknowledging the penalties for providing false and misleading information to secure Food Stamp benefits.
- (6) A Screening Form (included in DHS-1) was also completed and signed by _____ on 9/15/04. Mr. _____ indicated that he was applying for Food Stamp and Medical benefits. Mr. _____ marked "NO" to the question – Do you or any member of your household have any income for this month?
- (7) As documented in DHS-2, the Defendants reported that _____ would not be receiving Workers' Compensation in September 2004 because she had to be reevaluated by a doctor at WVU Hospital on September 30, 2004. The Worker documented that the Defendants were instructed to report changes within 10-days.

- (8) The Department submitted exhibit DHS-4, Workers Compensation Payment Screen, which verifies that the _____ not only received Workers' Compensation income the month of application (September 3rd & 20th 2004) but that she continued to receive Workers' Compensation income through December 2004. This exhibit verifies the check issued dates and payment amounts:
(9/3/04 - \$453.34), (9/20/04 - \$453.34), (10/4/04 - \$453.34), (10/18/04 - \$453.34), (11/1/04 - \$453.34), 11/15/04 - \$32.38), (11/18/04 - \$420.96), (12/2/04 - \$453.34), (12/13/04 - \$453.34), (12/27/04 - \$453.34).
- (9) The Department submitted exhibit DHS-5, Food Stamp Claim Determination, to show that by withholding information about household income, the Defendants received \$960 in Food Stamp benefits to which they were not entitled.
- (10) Teresa Smith testified that the Defendants were notified of the Department's intent to disqualify in exhibit DHS-6, to which _____ responded with a phone call on January 5, 2005 and indicated that there was no intent involved.

VIII. CONCLUSIONS OF LAW:

- (1) West Virginia Income Maintenance Manual ' 1.2 (E) states that it is the client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- (2) West Virginia Income Maintenance Manual ' 10.4, C:
This section contains policy relating income disregards and deductions and computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and number (of persons) in the benefit group.
- (3) West Virginia Income Maintenance Manual ' 10.3 (QQQQ) reveals that income received through Workers' Compensation is counted as unearned income for Food Stamp benefits.
- (4) West Virginia Income Maintenance Manual ' 20.2:
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.
- (5) Common Chapters Manual, Chapter 700, Appendix A, states that an Intentional Program Violation 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.
- (6) 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.
- (7) 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)

IX. 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 Defendants intentionally misrepresented their household situation by withholding information necessary to determine eligibility and benefit levels for the Food Stamp Program. Because the Defendants intentionally withheld information about their household income, the assistance group received \$960 in Food Stamp benefits to which they were not entitled. The withholding or concealment of information to secure Food Stamp 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**.

Only the Defendants are subject to this disqualification.

This disqualification will begin June 1, 2005

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29