

**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 March 22, 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 fair hearing was convened on March 22, 2005.

It should be noted here that the defendant is a current recipient of food stamp benefits.

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:

Vickie Adkins, Repayment Investigator

The defendant did not appear after being given proper and timely notice of the hearing.

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, 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:

Department' Exhibits:

- Exhibit D-1) Copy of Rights & Responsibilities dated 11/20/03
- Exhibit D-2) Copy of Food Stamp application (CAF) dated 12/01/03
- Exhibit D-3) Cash Assistance & Food Stamp Claim Determinations
- Exhibit D-4) Envelope returned from the post office showing appointment letter from repayment investigator "unclaimed"
- Exhibit D-5) Notification Letters dated 08/19/04 & 03/05/04
- Exhibit D-6) Copy of Affidavit of Physical Custody
- Exhibit D-7) Copy of Emergency Temporary Order
- Exhibit D-8) ADH Hearing Summary

VII. FINDINGS OF FACT:

- 1) The Investigations and Fraud Management (IFM) Unit received a referral from the FEFU unit regarding the overissuance of cash assistance (TANF) and food stamps occurring due to the children being out of the home.
- 2) Claims were written in the amount of \$2747.00 TANF and \$1189,00 in food stamps for the period October, 2003 through April, 2004. Eligibility Factor: Defendant applied for and received check and food stamps for children who were no longer under her care and control.
- 3) The defendant completed a food stamp application 12/01/03. Included in the assistance group were _____, _____, _____, _____, and _____. The defendant, _____, signed the application certifying the statements were true and correct. The application was approved. (Exhibit D-2)
- 4) The defendant signed the Rights & Responsibilities on 11/20/03. She agreed under #42 I understand that if I give incorrect or false information then I may be required to repay benefits I receive. I also may be prosecuted for fraud and I understand that any information given is subject to verification by an authorized representative of DHHR. Also, it is understood that any person who obtains or attempts to obtain welfare benefits from the DHHR by means of a willfully false statement or misrepresentation can be charged with fraud. (Exhibit D-1)
- 5) An investigation completed in 03/04 showed the defendant had not had the children in the home with her at the time of application or during the period of eligibility. Policy requires that in order to received cash assistance or food stamps as a dependent child said child must be living in the home.
- 6) Notification of case closure dated 03/25/04 reads that the check will stop as the household's current living situation prevents them from being eligible for this assistance. The food stamps decreased as the number of people receiving this benefit has decreased. (Exhibit D-5)
- 7) An Affidavit of Physical Custody in the Circuit Court of Raleigh County dated 08/20/04 reads that _____ has had physical custody of _____, _____, _____ and _____. The said physical custody in the said affidavit began on or about December 1, 2002 and is expected to continue for the foreseeable future. (Exhibit D-6)
- 8) The Emergency Temporary Order in the Family Court of Raleigh County WV dated 08/26/04 shows _____ was granted physical custody of the children and shall have temporary use and possession of the parties former residence located in Glen White. Raleigh County, WV and where the children have been living since the separation of the parties on August 31, 2003. (Exhibit D-7) .

VIII. 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) Policy dictates that the IPV claim is the difference between the entitlement the AG received and the entitlement the AG should have received.
- 3) The un-refuted testimony and evidence presented at the hearing shows the defendant did not have physical custody of the children she reported in the assistance group in a food stamp application dated 12/01/03. The children were removed from the assistance group according to information in found a notification letter dated 03/25/04.

IX. 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 the correct members of the assistance group at the time of application constitutes an intentional withholding and she did commit an Intentional Program Violation. The defendant will be disqualified for twelve months beginning June, 2005. Repayment will be initiated as policy dictates.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29