



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

Bob Wise
Governor

Paul L. Nusbaum
Secretary

January 14, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held January 6, 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 a member of the assistance group did not reside with you.

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 March, 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 January 6, 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 January 6, 2005.

It should be noted here that the defendant is 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.

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.

Section 9.1 #2o of the West Virginia Income Maintenance Manual reads in part:

When an individual, who is included in the AG, is absent or is expected to be absent from the home for a full calendar month, he is no longer eligible to be included in the AG, and must be removed after proper notice.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

- DHS-1) Application dated 08/15/03
- DHS-2) Rights & Responsibilities dated 08/15/03
- DHS-3) Application dated 11/18/03
- DHS-4) Rights & Responsibilities dated 11/18/03
- DHS-5) Case Comments from RAPIDS
- DHS-6) Narrative Comments from the Bureau of Child Support Enforcement
- DHS-7) Screen Prints of Eligibility Determination Groups for Referral Period
- DHS-8) Income Maintenance Manual Section 9.1 #2o
- DHS-9) ES-FS-5 Claim Determination Form
- DHS-10) Appointment letter dated 07/14/2004
- DHS-11) Income Maintenance Manual Section 20.2
- DHS-12) ADH Hearing Summary

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact:

1. The defendant completed an application for food stamps and WV Works on 08/15/2003. (DHS-1) _____ was included in the assistance group. The defendant signed the application certifying the statements were true and correct.
2. The defendant signed the Rights & Responsibilities 08/15/2003 (DHS-1) certifying all statements on the form have been read by her or read to her and she understood them. All the information given is true and correct and she accepts those responsibilities. Statement #6 regarding Administrative Disqualification

Requirements was completed. Statement #42 which reads in part:

"I understand if I give incorrect or false information or if I fail to report changes, then I may be required to _____ (Part VII. continued)

repay any benefits I receive. I may also be prosecuted for fraud and I understand that any information given is subject to verification by an authorized representative of the 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 or by impersonation or any other fraudulent device can be charged with fraud....."

3. The defendant completed a food stamp application on 11/18/2003 and signed it on 12/04/2003. (DHS-3) _____ was included in the assistance group. The defendant signed the application certifying all statements were true and correct.

4. . The defendant signed the Rights & Responsibilities 12/04/2003 (DHS-4) certifying all statements on the form have been read by her or read to her and she understood them. All the information given is true and correct and she accepts those responsibilities. Statement #6 regarding Administrative Disqualification Requirements was completed. Statement #42 which reads in part:

"I understand if I give incorrect or false information or if I fail to report changes, then I may be required to repay any benefits I receive. I may also be prosecuted for fraud and I understand that any information given is subject to verification by an authorized representative of the 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 or by impersonation or any other fraudulent device can be charged with fraud....."

5. RAPIDS Case Comments show the dates the claimant applied for food stamps and WV Works and did not report _____ out of the home. (DHS-5)

6. The narrative on 03/10/2004 in OSCAR (Child Support Enforcement computer system) for the case of _____ reads in part:

"FLC Hrg. AP showed, not client. And _____ showed. Said child has been with her almost exclusively. CT takes child a day or more a month and then returns child." Later, a zero order was granted "mainly to _____ has child, not CT, and absent parent not working, etc."(DHS-6)

7. Case Comments in RAPIDS dated 03/11/2004 read in part:

"I received DHS-1 from Child Support that _____ does not have _____. DHS-1 stated that _____ had been there 6 days in 5-03, 1 day in 6-03, 9 days in 7-03, 12 in 8-03, 10 in 9-03, 3 in 10-03, 1 in 11-03, 5 in 12-03, 3 in 1-04, 0 in 2-04, & 1 in 3-04. Client never reported this." (DHS-5)

8. _____ was included in the food stamp assistance group from 08/2003 through 03/2004. (DHS-7)

9. The defendant was overpaid \$892.00 for the period of 08/2003 through 03/2004. (DHS-9) The reason for the overpayment was the failure of the defendant to report _____ out of the home.

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 failed to report _____ did not reside in her home on applications dated 08/15/2003 and 11/18/2003. The Department became aware _____ did not reside in the home during a child support hearing on 03/10/2004.

_____ **(Part VII. continued)**

3. The defendant was overpaid \$892.00 in food stamps as a result of not reporting the correct household composition.

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 _____ was out of the home during applications dated 08/15/2003 and 11/18/2003 constitutes an intentional withholding and she did commit an Intentional Program Violation. The defendant will be disqualified for twelve months beginning March, 2005. Repayment will be initiated as policy dictates.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.