



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 12, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 15, 2005. Your hearing was based on the Department of Health and Human Resources' proposal that you committed an Intentional Program Violation.

In arriving at a decision, the State Hearings 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.

Eligibility for the Food Stamps is based on current policy and regulations. Some of these regulations state as follows: 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.

The information submitted at your hearing revealed: You failed to report unearned income in a timely manner. This resulted in an over issuance of Food Stamp Benefits in the amount of \$1,291.00

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department that you committed an Intentional Program Violation. You will be sanctioned from the Food Stamp Program for a period of one (1) year. The sanction will be effective November 2005.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Danita Bragg, Repayment Investigator

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

Defendant,

v.

Action Number: _____

**West Virginia Department of
Health and Human Resources,**

Respondent.

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 September 12, 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 Administrative Disqualification Hearing was convened on July 15, 2005 on a timely appeal filed May 9, 2005.

It should be noted here that the defendant's benefits have been continued pending a hearing decision.

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 EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

Danita Bragg, Repayment Investigator

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:

WV Income Maintenance Manual Section 9.1 (A) (2) (f) and, Common Chapters Manual, Chapter 700, Appendix A, Section B.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D A D H Summary
- D-1 Food Stamp Claim Determination
- D-2 Food Stamp Claim Calculation Sheet
- D-3 Food Stamp Issuance History – Disbursement
- D-4 Food Stamp Allotment Determination
- D-5 Rights and Responsibilities dated 05/21/04
- D-6 RSDI Payment History
- D-7 WVIMM Chapter 2.2 B REPORTING REQUIREMENTS
- D-8 WVIMM Chapter 20.2 FOOD STAMP CLAIMS AND REPAYMENT PROCEDURES
- D-9 42 CFR 273.16 DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION
- D-10 IG-BR-30; IG-BR-31; IG-BR-44 and; IG-BR-44a

Claimants' Exhibits:

- C-1 NONE

VII. FINDINGS OF FACT:

- 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.

3) Mrs. Bragg submitted the following A D H Summary:

I. IDENTIFYING INFORMATION

NAME: _____

ADDRESS: _____

AGE: 39

CASE #: _____

WORKERS INVOLVED DURING PERIOD IN QUESTION: EW1045, CC2006, EW1001, EW1054, ESS102, CC2078, EW1005.

II. CASE DATA

DATE OPENED: 01/15/04 DATE CLOSED: N/A

OVERPAYMENT PERIOD: December 19, 2003 through August 31, 2004.

AMOUNT OF FOOD STAMPS OVERISSUED: \$1,291.00

ELIGIBILITY FACTOR INVOLVED: Unreported unearned income. Client reported Social Security Disability Income had stopped. Verified through Social Security Administration this income did not stop.

III. SUMMARY OF FACTS

On August 5, 2004, the Investigations and Fraud Management Unit received a referral for repayment on the case of _____. The reason for the over payment referral was unreported income in the home due to Ms. _____ reporting Social Security Disability Income had ended when in fact this income continued and never ended. The Social Security Administration sent verification showing this income never ended. Ms. _____ had a review May 21, 2004, and SSDI was not reported at that time. SSDI was not reported until School Clothing Application was completed on August 5, 2004. Because of the nature of the claim, it has been pursued as an Intentional Program Violation (IPV).

The Code of Federal Regulations, Sec. 273.16(c) states that an IPV consists 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 or ATP's. Ms. _____ has opted not to sign a waiver of the Administrative Disqualification Hearing (ADH). This ADH has been requested to establish an IPV with a one (1) year sanction from the Food Stamp program, with repayment of the over issued Food Stamps in the amount of \$1,291 resulting from her IPV.

DHS-1: Agency Form ES-FS-5a, Food Stamp Claim Determination Form. This form shows the calculation of the Food Stamp over issuance. The over issuance is determined by

comparing the actual amount of Food Stamps issued to the household with the corrected amount of Food Stamps. These amounts are shown on the right and left-hand columns of the form, respectively. The corrected amounts are determined by recalculating Food Stamp allotments with the excluded eligibility factor, which, in this case is unreported unearned income. The total overpayment of \$1,291 for this claim period is shown at the bottom of the form, inside the block marked A Loss to Program.

DHS-2: Agency Form ES-FS-5a, Food Stamp Calculation Sheet. This form shows an itemized breakdown of the over issuance shown in DHS-1. The Corrected side of the form corresponds with the Corrected side of the ES-FS-5 (DHS-1). The Actual side is shown in the EFAD screen prints from the RAPIDS computer system (DHS-4).

DHS-3: IQFS Screen Prints from the RAPIDS Computer System. These screen prints show the amount of Food Stamps issued to Ms. ____'s household during the claim months. The amounts under the heading Issued Amount correspond with the Actual Coupon Allotments in DHS-1 and DHS-2.

DHS-4: EFAD Screen Prints from the RAPIDS Computer System. The screen prints show the calculation of the Food Stamp allotments at the time they were issued. They do not include the incorrect eligibility factor of unreported income in the household. They are the basis of the Actual side of the ES-FS-5a (DHS-2).

DHS-5: Copy of Rights and Responsibilities signed by Ms. ____, May 21, 2004. (There was a DFA-RR1 signed on 11/24/03 also). On this form Item 6 states: I understand if I am found (by court action or an administration disqualification hearing) to have committed an act of intention program violation. I will not receive food stamp benefits As follows: First Offence - One Year, Second Offence - two years, Third Offense - permanently. In addition, I will have to repay any benefits Received for which I was not eligible. Item 44 states: I understand, if I give incorrect or false information or if I fail to report changes that I am required to report, 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. Punishment upon conviction may be a fine up to \$5,000 and/or a jail sentence of 5 years in jail. For the Food Stamp Program Only - federal penalties may include a maximum fine of \$250,000 and a jail sentence up to 20 years.

DHS-6: Copy of Income Verification from the Social Security Administration. This information shows the Disability Income did not stop at any time during this repayment period.

DHS-7: Copy of Income Maintenance Chapter 2.2B-Reporting Requirements.

DHS-8: Copy of Income Maintenance Chapter 20.2-Food Stamp Repayment.

DHS-9: Copy of Federal Guidelines, Food and Nutrition Services, USDA, Section 273.16(c).

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

This client has received benefits through the WV DHHR since December 19, 2003. She has reported changes in employment, addresses, etc. She is aware and has been informed of the need to report accurate information during applications and reviews. For this reason we are asking that a first offense, 12 month IPV sanction be applied against Ms. _____. Additionally repayment of \$1,291 in over issued food stamps is requested.

4) Ms. _____ did not attend the scheduled Administrative Disqualification Hearing.

VIII. CONCLUSIONS OF LAW:

The testimony and supporting documentation indicates Ms. _____ failed to report unearned income in a timely manner.

IX. DECISION:

It is the decision of this State Hearing Officer that Ms. _____ committed an Intentional Program Violation. She will be sanctioned from the Food Stamp Program for a period of one (1) year. The sanction will be effective November 2005.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of September, 2005.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**