



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

August 3, 2005

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held July 12, 2005.

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.

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 9.1 (A)(2)(f) of the WV Income Maintenance Manual and 7 CFR Section 273.16).

The information submitted at your hearing revealed: You failed to report unearned income and, that your husband returned to work, in a timely manner. This resulted in an over issuance of food stamp benefits in the amount of \$1,586.00. The period of over issuance occurred for the months of May 2004 through September 2004.

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 twelve (12) months. The sanction will be effective September 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
Jennifer Butcher, 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 STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an administrative disqualification hearing concluded on August 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 administrative disqualification hearing was convened on July 12, 2005 on a timely appeal filed by the Department on May 9, 2005.

It should be noted here that the defendant was not receiving Food Stamp Benefits at the time of the hearing.

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:

Jennifer Butcher, 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:

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D ADH Hearing Summary
- D-1 Application dated 09/16/03
- D-2 CHIP Application dated 08/24/04
- D-3 Benefit Recovery Printout dated 09/07/04
- D-4 Benefit Payment History
- D-5 Employment Verification dated 01/21/05
- D-6 Food Stamp Claim Determination
- D-7 WVIMM Chapter 2.2 Reporting Requirements
- D-8 IG-BR-30; IG-BR-31; IG-BR-44 & IG-BR-44a

Claimants' Exhibits:

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. _____ did not attend the scheduled Administrative Disqualification Hearing on July 12, 2005. The Scheduling Notice (IG-BR-31) was issued via certified mail on May 10, 2005. Mrs. _____ signed the receipt on May 17, 2005.

4) Mrs. Butcher submitted the following Administrative Disqualification Hearing Summary:

I. IDENTIFYING INFORMATION

NAME: _____

ADDRESS: _____

AGE: 32

CASE #: _____

WORKERS INVOLVED DURING PERIOD IN QUESTION: Barbara Polen, Forrest Holley, Nancy Martinez and Alice Kayrouz

II. CASE DATA

DATE OPENED: April 15, 2003 DATE CLOSED: January 8, 2005

OVERPAYMENT PERIOD: May 2004 through September 2004

ELIGIBILITY FACTOR INVOLVED: Client failed to report the onset of _____

Unemployment in February 2004 and failed to report _____ returned to work within 5 days at Hibachi in July 2004

III. SUMMARY OF FACTS

The Investigation Fraud Unit received a referral from the IM Unit. That _____ and _____ failed to report the onset of the Unemployment of _____ in February 2004 and _____ failed to report the return to work of _____ to Hibachi in July 2004. Because of this unreported income an over issuance of Food stamps occurred for the period of May 2004 through September 2004.

The West Virginia Department Health and Human Resources has requested this hearing be held for the purpose of determining that _____ committed an Intentional Program Violation (IPV). The Federal Register, Article 273.16c defines an IPV as (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 Program Regulations, or any state statute relating to the use, presentation, acquisition receipt, or possession of Food Stamp coupons or ATP's.

EXB-1 ES 2 completed along with the Rights and Responsibilities signed by both _____ and _____ stating that they agree to all the statements and to report all changes that occur.

EXB-2 CHIP application dated 8/24/04 At this time we found out that _____ was receiving Unemployment of \$ \$570.00 every two weeks and that _____ had started back to work at Hibachi's .

EXB-3 BVRF dated 9/7/04. The referral from Income Maintenance Unit stating customer started working in July and did not report. Wife started receiving UCI and did not report.

EXB-4 Benefit Payment History screen for Unemployment for _____ was printed showing she started receiving unemployment on a regular basis April 17, 2004.

EXB-5 Request of Income verification date January 26, 2005 sent to Quy Nguyen (Hibachi) received back on February 2, 2005. As the printout shows _____ had worked for them before and employment ended December 15, 2003 with last pay check dated. _____ started back to work in July 2004 because his first pay check was dated August 5, 2004 with gross pay being \$590.00 for the period.

EXB-6 Food Stamp Claim Determination Sheets which show the amount of stamps the clients received and what they should have received if all income was counted.

EXB-7 Chapter 2.2 Income Maintenance Manual Reporting Requirements states Changes must be reported within 10 days of the date the change becomes known to the benefit group.

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

I am requesting a 12 month sanction be placed on _____ for an Intentional Program violation for withholding information for unearned and earned income that would have affected the benefits she and her family were receiving for the period of May through September 2004.

I am also asking for the repayment of over issued benefits in the amount of \$1586.00 to the Department.

VIII. CONCLUSIONS OF LAW:

1) Mrs. _____ failed to report receiving Unemployment Benefits and, that her husband had returned to work in a timely manner.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the PROPOSAL of the Department that _____ committed an Intentional Program Violation. She will be sanctioned from the Food Stamp Program for a period of twelve (12) months. The sanction will be effective September 2005.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd Day of August, 2005.

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