



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P. O. Box 2590  
Fairmont, WV 26555

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 22, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held August 24, 2005 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred.

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)

The information submitted at your hearing revealed that you intentionally provided false and misleading information about your household income to receive Food Stamp benefits for which you were not eligible.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. This disqualification will begin November 1, 2005.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
Teresa Smith, SRI, DHHR

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

\_\_\_\_,

**Defendant,**

**v.** **Action Number:** \_\_\_\_\_

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

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a hearing concluded on September 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 August 24, 2005.

All persons giving testimony were placed under oath.

**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 stamp benefits 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, State Repayment Investigator, DHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether or not the Defendant committed an Intentional Program Violation and should be disqualified from participation in the Food Stamp Program for a period of one (1) year.

**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, 10.4, 20.2, 20.2 C & D

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- DHS-1 Combined Application and Review Form 10/18/04.
- DHS-2 OFS-2 Application/Redetermination 1/6/05.
- DHS-3 Note from Dr. Larry M. Jones M.D., F.A.C.S on Rx pad dated 1/5/05.
- DHS-4 Case Comments from Rapids system 10/18/05 thru 1/6/05.
- DHS-5 Income verification for \_\_\_\_\_ and \_\_\_\_\_
- DHS-6 Food Stamp Claim Determination.
- DHS-7 Notification of Intent to Disqualify dated 3/25/05
- DHS-8 WVIMM, Chapter 1.2, 1.4, 9.1, 10.3 & 20.2.

**VII. FINDINGS OF FACT:**

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from State Repayment Investigator, Teresa Smith, on May 16, 2005. Ms. Smith contends that the Defendant has committed an Intentional Program Violation and she is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of one (1) year.
- 2) Notification of the August 24, 2005 hearing was mailed to the Defendant on July 5, 2005 via First Class Mail.
- 3) The hearing convened as scheduled at 10:30 a.m., and as of 10:45 a.m., the Defendant 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 Defendant in attendance.
- 4) Notification was received by the Hearing Examiner that the Defendant called the Ohio County. DHHR Office on the morning of August 24, 2005 and left a message that she would not be able to attend the scheduled hearing. The Defendant reported that she was ill and had been advised by her heart doctor to report to the emergency room of her local hospital.

- 5) On September 2, 2005, the State Hearing Examiner sent correspondence to the Defendant advising that good cause for failing to attend the August 24, 2005 hearing would be established if she could verify her 8/24/05 emergency room visit. The Defendant was allowed 10-days (until September 12, 2005) to provide verification. As of September 22, 2005, the Defendant had not contacted the State Hearing Examiner or her local DHHR. As result, a ruling will be made on the evidence presented by the Department.
- 6) The Department contends that the Defendant applied for Food Stamp benefits on October 18, 2004 (DHS-1) and reported that assistance group (AG) member \_\_\_\_\_, \_\_\_\_ was injured in a car wreck. The Defendant indicated that Mr. \_\_\_\_\_ was going to be off work for a while and that she was going to take a leave-of-absence from work to care for him. Food Stamp benefits were approved by the Worker on November 17<sup>th</sup> (effective 11/1/04) when verification of what was reported to be the only income for November (11/4/04 Ms. \_\_\_\_\_) & (11/8/04 for Mr. \_\_\_\_\_) and a 401K was received.
- 7) Exhibit DHS-4 includes case comments documented by the Worker on November 19, 2004. Case comments include – “Received call from \_\_\_\_\_ about case. Checked and case was approved on 11/17/04. Explained 7 to 10 days to receive card and Pin#.
- 8) The Defendant completed an OFS-2, Application/Redetermination, on January 6, 2005 (DHS-2). The Defendant reported that her income from Wal-Mart was the only household income as Mr. \_\_\_\_\_ was unable to return to work. The Defendant verified this claim by providing the Worker with a note from Larry M. Jones, M.D. Exhibit DHS-3 states – “Mr. \_\_\_\_\_ has been under my care for injury sustained in an auto accident on 3 Oct 04. He should not return to work until released by the Pain Management Services (Dr. Weidman).
- 9) The Department requested income verification for the Defendant and Mr. \_\_\_\_\_. The income verification received (DHS-5) reveals that the Defendant returned to work and received a partial pay on 11/4/04 (verified at application) but she continued to receive unreported pays on 11/18/04, 12/2/04, 12/16/04 and 12/30/04. Advantage Payroll Services verified \_\_\_\_\_ income and he received income through employment on 11/8/04 (verified at application), and unreported income included pays received on 11/24/04, 12/08/04, and 12/24/04.
- 10) Department’s exhibit DHS-6 includes the calculations used to determine the AG’s gross monthly income and eligibility for Food Stamp benefits during the period November 1, 2004 thru January 31, 2005. This evidence demonstrates that the AG’s gross income was in excess of the maximum allowable income for an AG of 2, and as a result, the AG received \$689 in Food Stamp benefits for which they were not entitled.
- 11) West Virginia Income Maintenance Manual ' 10.4:  
This section contains policy relating income disregards and deductions and to computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and the number in the benefit group.

- 12) West Virginia Income Maintenance Manual ' 1.2 (E):  
The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 13) West Virginia Income Maintenance Manual ' 20.2:  
When a AG (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.
- 14) 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)
- 15) Common Chapters Manual 700, Appendix A, Section B, provides 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 benefits.
- 16) Common Chapter Manual 700, Appendix A, Section G (The Decision) states that the State Hearing Officer 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 Section B of Appendix A.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy states that when an AG (assistance 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.
- 2) If it is determined that an Intentional Program Violation has been committed, a disqualification penalty is imposed on the AG. For a first offense, the penalty is one (1) year.
- 3) It is unclear if the Defendant intentionally misled the Department on the day of application (10/18/04), but the evidence appears to indicate that both she and Mr. \_\_\_\_\_ were back to work when she called to confirm that the Department received income verification on November 19, 2004. Further, evidence reveals that on January 6, 2005, the Defendant made false and misleading statements when she reported the only household income was being received by her through employment at Wal-Mart.
- 4) By providing false and misleading information about household income, the AG received \$689 in Food Stamp benefit for which they would not have been eligible.

**IX. DECISION:**

The making of false or misleading statement or the misrepresentation of facts to secure Food Stamp benefits constitutes a clear violation of the regulations. Based on evidence presented, I find the violation intentional.

The Agency=s proposal to apply a Food Stamp disqualification is **upheld**.

Only the Defendant is subject to this disqualification.

The 1-year disqualification will be effective beginning November 2005.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 22nd Day of September 2005.**

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**Thomas E. Arnett  
State Hearing Officer**