



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

October 5, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 20, 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. There is an over issuance of food stamp benefits in the amount of \$1,116.00, for the period covering July 2004 through December 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 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
Jennifer Butcher, Repayment Investigator

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

_____,

Defendant,

v.

Action Number: 05-BOR-5775

**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 20, 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 originally scheduled on August 16, 2005 on a timely appeal filed March 23, 2005. Mrs. Butcher requested to reschedule the hearing due to a family emergency. The hearing finally convened on September 20, 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:

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:

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-1 Application dated 04/16/04
- D-2 – D-7 Case Comments dated 05/21/04 – 12/14/04
- D-8 Benefit Recovery Referral dated 01/14/05
- D-9 Employer Verification Letter dated 10/28/05
- D-10 Food Stamp Claim Determination
- D-11 Notification of Intent to Disqualify dated 05/03/05
- D-12 WVIMM Chapter 2.2 B REPORTING REQUIREMENTS
- D-13 ADH Hearing Summary
- D-14 Rescheduled Notice dated 08/16/05
- D-15 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. Butcher submitted the following A D H Summary:

I. IDENTIFYING INFORMATION

NAME: _____

ADDRESS: _____

AGE: 30

CASE #: _____

WORKERS INVOLVED DURING PERIOD IN QUESTION: Shawn McMaster, Sheila Wolfe, John Shamblin, Ed Dover, and Patricia Hager

II. CASE DATA

DATE OPENED: April 2004 DATE CLOSED: August 2005

OVERPAYMENT PERIOD: July 2004 to December 2004

ELIGIBILITY FACTOR INVOLVED: Unreported earned income

III. SUMMARY OF FACTS

The Investigation Fraud Unit received a referral from the Criminal Investigation Unit(CI) that _____ failed to report within 10 days that she started to work for Jiffy Lube on June 2, 2004 .Because of this unreported income an over issuance of Food stamps occurred for the period of July 2004 thru December 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 stamps coupons or ATP's.

EXB-1 ES-2 dated 4/16/2004 an application for Food Stamps and TANF at that time she read or had read to her the Rights and Responsibilities (R&R) and signed both the application and R&R accepting all responsibilities and that everything was true and correct.

EXB-2 CMCC dated 5/21/04 _____ was sent a letter for placement appointment on 6/7/04 and on 6/8/04 was recorded _____ did not show for appointment.

EXB-3 CMCC dated 6/16/04 client is scheduled for Good Cause appointment for 6/29/04. No show

EXB-4 CMCC dated 7/16/04 client requested new EBT card.

EXB-5 CMCC dated 10/14/04 client did not turn in her time sheet.

EXB-6 CMCC dated 10/28/04 worker received back verification from the Front End Fraud Unit that _____ had been working at Jiffy Lube since June 2, 2004 and client never reported this income to the department.

EXB-7 CMCC dated 12/14/04 _____ called to request a new medical card and that she had moved, but did not say anything about her working.

EXB-8 A BVRF referral from the CI unit on 1/14/05 stating that _____ had been working at Jiffy Lube and failed to report earnings and start date.

EXB-9 IFM-5A request for Income verification dated 10/28/2004 from Jiffy Lube on return of request _____ started to work on June 2, 2004 first pay was 6/10/04

EXB-10 Food Stamp Claim Determination sheet showing the amount of stamps client received and the amount she would have been entitled to if she had reported income timely.

EXB-11 IG-BR44a and 44 was mailed to Ms _____ on April 18,2005 to _____ this letter was returned client had moved to _____ the letter was re-mailed on May 3,2005. I received no response to this letter.

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

_____ has been receiving benefits from the department for many years and knows how to report changes as she had read each time she was in for her applications and reviews and signed the R&R accepting the responsibilities which one is to report within 10 days of any changes that the client becomes aware of. EXB-12 Chapter 2.2 of the Income Maintenance Manual.

I am requesting a 12 month sanction for _____ for an Intentional Program Violation of failing to report earnings and for her to repay the department the amount of \$1116.00.

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

VIII. CONCLUSIONS OF LAW:

The testimony and documentation submitted during the hearing support the Findings that, Ms. _____ committed and Intentional Program Violation by failing 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 5th Day of September, 2005.

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