



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 11, 2005

Dear Mr. _____:

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 earned income in a timely manner. This resulted in an over issuance of Food Stamp Benefits in the amount of \$1,679.00 for the period covering November 2004 through March 2005.

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:** _____

**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 for August 16, 2005 on a timely appeal filed June 1, 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 A D H Summary
- D-1 Application dated 10/22/04 and Rights and Responsibilities dated 10/22/04
- D-2 Case Comments 09/27/04 – 12/13/04
- D-3 LIEAP Application dated 12/09/04
- D-4 Case Comments 12/14/04 – 02/07/05
- D-5 Case Comments 02/07/05 – 02/10/05
- D-6 Case Comments 04/11/05
- D-7 Case Comments 04/11/05 – 04/18/05
- D-8 Benefit Recovery Referral dated 05/20/05
- D-9 Wage Verification dated 05/12/05
- D-10 Food Stamp Claim Determination
- D-11 Notification of Intent to Disqualify dated 05/23/05
- D-12 WVIMM Chapter 2.2 B REPORTING REQUIREMENTS
- D-13 Rescheduled Hearing Notice dated 08/15/05
- D-14 IG-BR-30; IG-BR-31; IG-BR-44 and; IG-BR-44a
- D-15 GroupWise Message re: Scheduling

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: 40

CASE #: _____

WORKERS INVOLVED DURING PERIOD IN QUESTION: Patricia Gollihue, Joseph Pawlowski, Jonnie Tomer, Kimberly Waugh, Barbara Polen

II. CASE DATA

DATE OPENED: 6/13/02 DATE CLOSED: currently active

OVERPAYMENT PERIOD: November 2004 thru March 2005

ELIGIBILITY FACTOR INVOLVED: Not reporting earned income.

III. SUMMARY OF FACTS

The Investigation Fraud Unit received a referral from the IM Unit that, _____ failed to report within 10 days that husband _____ started to work for United Talent in October 2004. Because of this unreported income an over issuance of Food Stamps occurred for the period of November 2004 through March 2005.

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 10/22/04 was completed for West Virginia Works, Food Stamps and Medicaid. The Rights and Responsibilities was completed by Mr. and Mrs. _____ accepting all obligations and responsibilities then signed by both.

EXB -2 CMCC dated 10/08/04 worker received a phone call from _____ requesting verification of Food Stamps received.

EXB-3 LIEAP application received dated 12/9/04 showing only income is WV W income of \$ 281.00 no other reported.

EXB-4 CMCC dated 2/7/05 states received new hire alert that _____ began working for Telespectrum on 1/10/05 pending for income. Received statement on 2/15/05 that _____ worked from 1/10/05 to 1/26/05.

EXB-5 CMCC dated 2/10/05 _____ in office to report she was no longer working at Telespectrum and they now have an 88 Chevy Celebrity and no longer have the 1998 Mercury Villager Sport Van.

EXB-6 CMCC dated 4/11/05 _____ was in today for the review She reported that _____ begins a new job in about a week. Also reported that son _____ is in the process of moving out

EXB-7 CMCC dated 4/12/05 states worker found through DXRL on Employee Wage Match screen that _____ made \$2830.90 through United Talent in the 4th quarter of 2004.

EXB-8 WV Works worker sent ADCW referral dated 4/12/05 for both Works check and Food Stamps. A separate referral had to be completed for

Food Stamps on 5/20/05 stating _____ was working for Telespectrum from 10/04 to 3/05 and was not reported within 10 days. Neither he nor _____ reported working while they received ADCW check during this time period see referral # _____ dated 4/12/05

EXB-9 IFM-INC verification form dated 5/12/05 was sent to United Talent requesting income verification for _____ during the date of hire to current. Received verification back on 5/18/05 showing that _____ received his first pay check on 10/15/04.

EXB -10 Food Stamp Claim Determination sheets were completed showing benefits received and the corrected amount the household should have gotten if income was reported timely.

EXB-11 IGBR-44a and 44 along with a repay agreement was mailed to both _____ and _____ on May 23, 2005 informing them of the Intentional Program Violation for failing to report earned income. On May 31, 2005 received the IG-BR 44's back from both requesting an Administrative Hearing. Request was forwarded to hearing officer for scheduling.

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

_____ has received benefits from the Department for many years and each time of Application or Reviews she read the Rights and Responsibilities and signed her name accepting the responsibilities of all the statements including to report changes within 10 days of them occurring.

EXB-12 Chapter 2.2 of the Income Maintenance Manual Reporting Requirements states

Changes must be reported within 10 days of the day the change becomes known to the benefit group.

Mrs. _____ knew to report changes as shown in exhibits 2, 5, and 6, Clients also withheld income from _____'s job when they came in for their review on October 22, 2004 he had already received two pay checks on 10/15/04 for \$63.50 and on 10/22/05 for \$170.55 . Then on 12/9/04 when the application for LIEAP was received _____ failed to report _____'s earning for the month of November 2004

By these two applications it shows that Mr. and Mrs. _____ were withholding income to make the house hold eligible to receive more benefits then they were entitled from the Department. I an asking that a 12 month Intentional Program Violation sanction be placed on _____ and the sum of \$1679.00 be repaid to the Department for the over issuance of Food Stamps for the period of November 2004 through March 2005.

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

VIII. CONCLUSIONS OF LAW:

The testimony and supporting documentation indicate that Mrs. _____ failed to report earned income in a timely manner.

IX. DECISION:

It is the decision of this State Hearing Officer that Mrs. _____ 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 11th Day of October, 2005.

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