



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 11, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 10, 2005. Your hearing request was based on the Department of Health and Human Resources' claim that you have 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 Stamp Program is based on current policy and regulations. Some of these regulations state as follows: 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 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 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,g 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 in a timely manner. This resulted in an over issuance of \$1,511.00 in Food Stamp Benefits, for the period covering July 2004 through October 2004.

It is the decision of the State Hearings Officer to UPHOLD the proposal of the Department to determine 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 August 2005.

Sincerely,

Ray B. Woods, Jr., M. L. S.
State Hearings 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 a fair hearing concluded on July 11, 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 May 10, 2005 on a timely appeal filed by the Department on March 11, 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(s) to be decided is whether it was shown by clear and convincing evidence that the defendant has committed an act of intentional program violation.

V. APPLICABLE POLICY:

Common Chapters Manual, Chapter 700, Appendix A, Section B; West Virginia Maintenance Manual Section 1.2; 1.4; 9.1 and; 20.2.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Application dated 05/20/04
- D-2 Case Comments dated 05/20/04 – 10/29/04
- D-3 Application dated 10/28/04
- D-4 Benefit Recovery Referral dated 10/29/04
- D-5 Workers Compensation Printout dated 03/04/05
- D-6 WVIMM Chapter 2.2
- D-7 Food Stamp Determination Sheet

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

- 1) Mrs. Butcher provided the following Administrative Disqualification Hearing Summary:

I IDENTIFYING INFORMATION

NAME: _____

ADDRESS: _____

AGE: 44

CASE #: _____

WORKERS INVOLVED DURING PERIOD IN QUESTION: April Cutlip and Danny Fields

II. CASE DATA

DATE OPENED: May 2004 DATE CLOSED: Active

OVERPAYMENT PERIOD: July 2004 thru October 2004

ELIGIBILITY FACTOR INVOLVED: Failed to report _____'s Workers' Compensation income.

III. SUMMARY OF FACTS

The Investigation Fraud Unit received a referral from the IM Unit. That _____ intentionally withheld information of the onset of _____'s Workers' Compensation income on June 3, 2004. Because of this unreported income an over issuance of Food stamps occurred for the period of July 2004 thru October 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 5/20/04 an application for Food Stamps was completed and signed by _____ after she read the Rights and Responsibilities and understood her obligations to report changes. She also provided a copy of the form completed for Worker's Compensation where _____ has applied but not received a decision on claim as of yet.

EXB-2 CMCC from 5/20/04 to 10/29/04 as shown no contact between application on 5/20/04 and review on 10/28/04, recording was completed on 10/29/04.

EXB-3 ES-2 dated 10/28/04 A review completed on this date and at this time it was discovered that _____ had been receiving Worker's Compensation in the amount of \$619.50 every 14 days since June 3, 2004. This income was never reported to the Department by clients.

EXB-4 BVRF referral dated 10/29/04 was sent to Repayments. On March 4, 2005 the Repayment Investigator began to clear the referral and the income was verified but Workers' Comp printout dated 3/4/05

EXB-5 Workers' Compensation printout dated 3/4/05 showing that _____ started receiving his Workers Comp. on 6/3/04 with a lump sum of \$1106.29 then started getting payments every two weeks. This was never reported to the Department till it was provided at review on 10/28/04.

EXB-6 Chapter 2.2 Income Maintenance Manual and the Rights and Responsibilities that were read and signed by _____. Chapter 2.2 of IM manual states "Changes must be reported within 10 days of the date the change becomes known to the benefit group". Rights and Responsibilities page 3 item # 12 "I agree to notify the local DHHR office within 10 days of the following changes. I understand that I am only required to report these changes if there is no adult in the household who employed. A) My household's unearned income changes by \$50.00 or more. The household income went from zero to \$1637.25 per month.

EXB-7 ES-FS-5 Food Stamp Claim Determination Sheet. These calculation sheets show the amount of benefits the client received during the months of July 2004 thru October 2004 and what they should have received if the Worker's Compensation was reported timely.

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 has signed applications and reviews and at each interview the Rights and Responsibilities had been read by her and she understood the questions.

The application on May 20, 2004 was completed and client knew they had to report changes within 10 days. The Workers' Compensation started only 14 days after the application and/or interview was held.

I am asking that _____ be placed on a 12 month Intentional Program Violation sanction and to repay the Department the sum of \$ 1511.00 in over issuance of Food Stamps during the months of July 2004 to October 2004.

2) WV Income Maintenance Manual Policy § 1.2, states: The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.

3) WV Income Maintenance Manual Policy § 1.4, states: Individuals who have committed an Intentional Program Violation (IPV) are ineligible for a specified time, determined by the number of previous (IPV) disqualifications.

4) WV Income Maintenance Manual Policy § 20.2 states: Intentional Program Violations include making false or misleading statements, misrepresentations, concealing or withholding information.

5) 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.

6) According to policy in WV Income Maintenance Manual Section 9.1,A,2,g, 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

VIII. CONCLUSIONS OF LAW:

1) _____ failed to report in a timely manner that, the household was receiving unearned income.

IX. DECISION:

It is the decision of this State Hearing Officer 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 August 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 July, 2005.

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