



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

September 9, 2005

Dear Ms. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 16, 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 did not conclude that you committed an intentional program violation by withholding information regarding household income.

It is the decision of the State Hearings Officer to reverse the proposed action of the Department to apply a Food Stamp Sanction to your case for an intentional program violation.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Roger Kimble, Repayment Investigator

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Presiding at the Hearing was Sharon K. Yoho, 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 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;20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case comments dated April 27, 2004 thru May 12, 2004
- D-2 Case comments dated September 27, 2004 thru February 18, 2005
- D-3 Computer quarterly wage match information
- D-4 Computer wage information for ____ Excavating Inc.
- D-5 Food Stamp claim determination for July 2004
- D-6 Claim computations
- D-7 West Virginia Maintenance Manual Policy Sections: 1.2, 1.4, 9.1 & 20.2

VII. FINDINGS OF FACT:

- 1) ____ was an active recipient of the Food Stamp program in May 2004 when she contacted the department to report ____, her daughter ____'s father, had moved into the household. She reported this on May 4, 2004. No income was reported for Mr. _____. Registration with Job Services was requested for Mr. ____ and he was included in the Food Stamp benefit group.
- 2) On September 27, 2004, the defendant called the DHHR office to report changes in her case. She reported new rent and utility amounts and that ____ is no longer in the home. When asked how expenses were being paid, Ms. ____ told the caseworker that she was receiving child support and that ____ was receiving workers compensation.
- 3) The newly reported child support and workers compensation income was entered into the computer system, which resulted in case, closure due to excessive income.
- 4) On February 18, 2005, the department found, during a wage data check, that ____ had unreported employment from three (3) different employers in the second quarter of year

2004. The third employment continued into the third quarter of 2004. The first two employments produced minimal income of less than \$300. each.

- 5) The third employment was with ____ Excavating and was verified by the Claims and Collections unit to have begun June 4, 2004 and continued until July 6. Gross earnings for June 2004 were \$803.41 and gross earnings for July were \$2715.33.
- 6) Ms. ____ nor Mr. ____ reported this employment, which lasted just over one month. Ms. ____ stated that she was aware that Mr. ____ had worked at ____ Excavating and that he was injured on the job. She indicated that she was not clear on when he began the job.
- 7) Had the defendant reported this employment within 10 days of the start of the employment, the department would have closed the Food Stamp case for the month of July for anticipated excessive income.
- 8) No signed rights and responsibilities were provided as evidence during this hearing.
- 9) **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.
- 10) **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.
- 11) **WV Income Maintenance Manual Policy § 20.2 states:** Intentional Program Violations include making false or misleading statements, misrepresentations, concealing or withholding information.
- 12) **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.
- 13) **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) Policy 20.2 is clear that the intentional withholding of information is considered a violation of the Food Stamp program.

- 2) Policy 1.4 and 9.1 stipulates that if an intentional program violation has been committed, a disqualification penalty must be applied. The disqualification for a first time offense is twelve months.
- 3) There was not clear and convincing evidence presented to support the agency's belief that the defendant intentionally withheld information necessary to compute accurate benefits. It is not clear whether the defendant was made aware of her responsibilities to report the onset of income within 10 days. No evidence of a false statement was presented and only evidence of the withholding of information was reported.

IX. DECISION:

It is the finding of the Hearing Officer that the defendant did not report needed information for accurate computation of Food Stamp benefits however; it was not proven that this was an act of intentional program violation. It is the ruling of this Hearing Officer that Ms.____ should not be disqualified from participation in the Food Stamp program and that the Food Stamp claim is to be classified as a client unintentional error claim.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th Day of September 2005.

**Sharon K. Yoho
State Hearing Officer**