



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 20, 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 you intentionally provided false and misleading information about your household composition in order to receive Food Stamp benefits.

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 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 fair hearing was convened on August 24, 2005.

It should be noted here that the Defendant is a current recipient of Food Stamp benefits.

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 ' 1.2, 10.4, 20.2, 20.2 C & D

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1a Combined Application and Review Form dated 3/27/03
DHS-1b Combined Application and Review Form dated 5/29/03
DHS-1c Combined Application and Review Form dated 8/14/03
DHS-2 Case Comments from 5/1/05 thru 8/10/04
DHS-3 ____ school enrollment and residence
DHS-4a Food Stamp Claim Determination for June and July 2003
DHS-4b Food Stamp Claim Determination for August thru December 2003
DHS-5 Notification of Intent to Disqualify (IG-BR-44a)
DHS-6 WVIMM, Chapter 1.2, 1.4, 9.1, & 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 July 5, 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 21, 2005 and again July 26, 2005 via First Class Mail, as the Defendant was receiving Food Stamp benefits at an address verified by the Department when the notice was sent.
- 3) The hearing convened as scheduled at 11:15 a.m., and as of 11:30 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) Evidence submitted by the Department indicates that the Defendant initially applied for Food Stamp benefits on March 27, 2003. This application included the Defendant, her husband, ____ and her daughter, ____ (DHS-1a)

- 5) On May 13, 2003, the Defendant called the Department and reported that she wanted to add her son, _____ to her Food Stamp benefits as he began residing with her when school let out. _____ was added to the Assistance Group (AG) effective June 2003 (DHS-2).
- 6) On May 29, 2003, the Defendant completed a review (DHS-1b) and reported four (4) members in the Food Stamp AG – The Defendant, _____, _____ and _____.
- 7) The Defendant reapplied for Food Stamps on August 14, 2003 and again reported four (4) members in the AG – The Defendant, _____, _____ and _____. Food Stamp benefits from this application were received through December 2003.
- 8) On May 4, 2004, DHS-2 reveals that the Department received a phone call from _____ who reported that _____ is living with her and that he has lived with her for almost two years.
- 9) Evidence identified as exhibit DHS-3 reveals that _____ Elementary School verified that _____ has been enrolled in their school since August 1998 and that _____, _____'s grandmother, who resides at _____ has been listed as his contact and guardian.
- 10) Case Comments dated May 19, 2004 (DHS-2) indicates that _____ was removed from the Defendant's case so he could be put on the case with his grandmother - who states _____ has lived with her for 2-years.
- 11) The Department sent the Defendant a Notification of Intent to Disqualify (DHS-5) on June 4, 2004 to which the Defendant did not respond.
- 12) The Department submitted exhibits DHS-4a and DHS-4b (Food Stamp Claim Determination) to show that the Defendant received Food Stamp benefits during the period June 2003 thru December 2003 for which she was not eligible.
- 13) 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.
- 14) 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.
- 15) 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.
- 16) 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)

- 17) 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.
- 18) 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) Evidence reveals that the Defendant made several false and/or misleading statements when she reported her son was living in her household. As a result, the Defendant received Food Stamp benefits during the period June 2003 thru December 2003 that she would not have otherwise been eligible to receive.

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 20th Day of September 2005.

**Thomas E. Arnett
State Hearing Officer**