



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 26, 2005

Mrs. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mrs. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 18, 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 acted to commit an Intentional Program Violation, by withholding facts about your husband's (Mr. \_\_\_\_\_), earned income in a timely manner. This resulted in an over issuance of Food Stamp Benefits in the amount of \$2,638.00 for the period covering June 2004 through March 2005.

It is the decision of this State Hearing Officer that you will be sanctioned from the Food Stamp Program for a period of one (1) year. The sanction will be effective December 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  
Brian Shreve, 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 October 26, 2005 for Mrs. \_\_\_\_\_. 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 scheduled for August 18, 2005 on a timely appeal filed July 18, 2005.

It should be noted here that the defendant's was not receiving benefits at the time of the hearing. A pre-hearing conference was held between the parties prior to the hearing. Mrs. \_\_\_\_\_ did not have legal representation.

**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:**

\_\_\_\_\_, Defendant

\_\_\_\_\_, Spouse  
Brian Shreve, 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:**

- A 7CFR273.16 Disqualification for intentional program violation
- B Benefit Recovery Referral dated 03/28/05
- C Food Stamp Claim Determination
- D Case Comments 03/17/05 – 04/12/05
- E Employment Verification dated 05/23/05
- F LIEAP Application dated 11/05/04
- F1 Case Comments 11/24/04 – 02/16/05
- G WVIMM Section 1.2 E CLIENT RESPONSIBILITY
- H WVIMM Section 2.2 B REPORTING REQUIREMENTS
- I WVIMM Section 20.2 FOOD STAMP CLAIMS AND REPAYMENT PROCEDURES
- J WVIMM Section 20.6 REFERRALS TO THE CRIMINAL INVESTIGATION UNIT
- K Application dated 10/21/02
- L Notification of Intent to Disqualify dated 05/26/05
- M IG-BR-30; 31 & 44
- N ADH Summary
- O ADH Summary Addendum

**Claimants' Exhibits:**

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) Mr. Brian Shreve submitted and read the following A D H Summary:

**I. IDENTIFYING INFORMATION**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

AGE: 47

CASE #: \_\_\_\_\_

WORKERS INVOLVED DURING PERIOD IN QUESTION: Brenda  
Toppings & Loritha Hiles

**II. CASE DATA**

DATE OPENED: June 2001

DATE CLOSED: March 31, 2005

OVERPAYMENT PERIOD: June 2004 to March 2005

AMOUNT OF FOOD STAMPS OVER ISSUED: \$2638.00

ELIGIBILITY FACTOR INVOLVED: Timely Reporting & Earned Income

**III. SUMMARY OF FACTS**

The WV DHHR has requested this hearing be held for the purpose of determining that \_\_\_\_\_ committed an IPV. The Federal Register 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 regulations or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of FS coupons or ATP's.

The IFM unit received a referral from the IM unit that the customer had failed to report her husband's earned income from Wal-Mart. Because the earned income was not reported in a timely manner the FS were over issued from June 2004 to March 2005, totaling \$2638.00.

On March 17, 2005, Mr. \_\_\_\_\_ came in for a food stamp review. During the review Mr. \_\_\_\_\_ reported he returned to work in April 2004. He stated he reported it to the department. In May 2005, when I worked up the claim, I requested income verification from his employer Wal-Mart.

That verification was provided by the web site "The Work Number." The verification confirmed what Mr. \_\_\_\_\_ reported. That he returned to work in April 2004. I would like to point this is the same thing that Mr. \_\_\_\_\_ stated to me in person. On June 14, 2005, Mr. \_\_\_\_\_ came in for his wife to discuss the IG-BR-44 & 44A, I had sent her. He stated that his wife had reported the information to the department. I was unable to find evidence to support his statement.

As to intent: Mrs. \_\_\_\_\_ had one chance to report Mr. \_\_\_\_\_ earned income. In November 2004, Mrs. \_\_\_\_\_ completed a LIEAP application form and mailed it in. On that form the only income reported is Mrs. \_\_\_\_\_ Social Security benefits. No other income was listed on the form.

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

\_\_\_\_\_ has received benefits since June 2001. During that time several applications have been completed. Several times she has read or had read to the rights & responsibilities & affixed her signature accepting the responsibilities thereof.

Section 1.2.E of the IM manual states: "The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his/her eligibility." \_\_\_\_\_ has failed to do so by failing to report her husband's earned income. Therefore, the case worker was unable to make a correct decision as to their eligibility.

Section 2.2 of the IM manual states all changes are to be reported within 10 days. This is considered timely reporting which Mrs. \_\_\_\_\_ failed to do.

Section 20.1 of the IM Manual states: When an AG has been issued more FS than entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or Intentional Program Violation (IPV) claim. The claim the difference between the entitlement the AG received and the entitlement the AG should have received.

Section 20.6A of the IM Manual states in the last paragraph: "Likewise; it is not essential that an affirmative representation be made. Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false."

I recommend that \_\_\_\_\_ be sanctioned for 1 year for an IPV in compliance with Federal Register 273.16C. Also that repayment be made in accordance with section 20.2, which states all or in part: By benefit reduction, Lump sum payment or monthly payments. In the event the claim is delinquent it will be subject to tax intercept. All liable debtors are responsible.

- 4) The Hearsay Rule was explained to Mrs. \_\_\_\_\_ as it pertained to Department's Exhibit "D." The Case Worker who wrote the Case Comments was not available for

cross-examination. Mrs. \_\_\_\_\_ objected to the reference and it will not be considered in the decision.

- 5) Mr. and Mrs. \_\_\_\_\_ testified that they left messages for their various Case Workers to report the earned income. When they did not receive a response from the Department Workers, they assumed everything was correct. The \_\_\_\_\_' contributed the failure to report income on the LIEAP application dated November 5, 2004 as human error. The State Hearing Officer requested Mr. Shreve to make an extensive check of the record for any report of income. The result of the search would be submitted to all parties. Mr. Shreve submitted a response on August 23, 2004 which stated in part, "I did not find anything that helped support Mr. and Mrs. \_\_\_\_\_ or would cause me to make this an agency error. Therefore, the department is requesting you make a ruling based on the evidence and testimony given during the hearing on August 18, 2005."

#### **VIII. CONCLUSIONS OF LAW:**

Mr. \_\_\_\_\_ began working in April 2004. He reported during a Food Stamp Review on March 17, 2005 that he had returned to work. A Low Income Energy Assistance Program (LIEAP) application received by the Department on November 19, 2004, did not list Mr. Jerry \_\_\_\_\_' earned income. The only listed income on the application was for Mrs. \_\_\_\_\_' Social Security benefits. There are no available records indicating that Mr. and Mrs. \_\_\_\_\_ reported the onset of earned income in a timely manner.

#### **IX. DECISION:**

It is the decision of this State Hearing Officer that Mrs. \_\_\_\_\_ acted to commit an Intentional Program Violation, by withholding facts about Mr. \_\_\_\_\_' earned income. She will be sanctioned from the Food Stamp Program for a period of one (1) year. The sanction will be effective December 2005.

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 26th Day of October, 2005.**

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