



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 12, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 13, 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 that a child did not reside with you for more than 50% of the time. This resulted in an over issuance of Food Stamp Benefits in the amount of \$1,019.00 for the period covering March 11, 2004 through August 2004 and October 2004 through December 2004.

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 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; Debbie Roberts, 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 12, 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 scheduled for September 13, 2005 on a timely appeal filed July 19, 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:

DHS-1	Benefit Recovery Referral dated 01/05/05
DHS-2	WVIMM Section 1.2 E CLIENT RESPONSIBILITY
DHS-3	Food Stamp Claim Determination
DHS-4	7CFR273.16 Disqualification for intentional program violation
DHS-5	Case Comments 03/11/04
DHS-6	Application dated 03/11/04
DHS-7	Rights and Responsibilities dated 03/11/04
DHS-8	Case Comments 03/23/04
DHS-9	Case Comments 10/07/04
DHS-10	Food Stamp Allotment Determination
DHS-11	Rights and Responsibilities dated 10/07/04
DHS-12	Case Comments 11/10/04
DHS-13	Case Comments 11/19/04
DHS-14	Case Comments 12/14/04
DHS-15	Case Comments 01/03/05
DHS-16	Case Comments 02/28/05
DHS-17	WVIMM Section 2.2 B REPORTING REQUIREMENTS
DHS-18	WVIMM 20.6 Benefit Repayment
DHS-19	Notification of Intent to Disqualify dated 05/26/05
DHS-20	WVIMM Section 20.1 INTRODUCTION
DHS-21	ADH Hearing Summary
DHS-22	IG-BR-30; IG-BR-31; IG-BR-44

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) Mrs. Butcher submitted the following A D H Summary:

IDENTIFYING INFORMATION

NAME: _____

ADDRESS: _____

AGE: DOB-_____

CASE#: _____

WORKER INVOLVED DURING PERIOD IN QUESTION: REGINNA WAGONER, TAMARA SMITH, TAMMY MABE, DEBBIE COOPER, TISHA BARNETT.

CASE DATA

DATE OPENED: 12/01

DATE CLOSED: ACTIVE

OVERPAYMENT PERIOD: 3/11/04-8/04 & 10/04-12/04

OVER ISSUED AMOUNT: \$1019.00

ELIGIBILITY FACTO INVOLVED: FAILURE TO REPORT THAT CHILD DID NOT RESIDE WITH HER MORE THAN 50% OF THE TIME.

SUMMARY OF FACTS

DHS-1_____THE IFM UNIT RECEIVED A REFERRAL THAT CHILD DID NOT RESIDE WITH HER FOR MORE THAN 50% OF THE TIME. .

DHS-2_____CHAPTER 1.2 E STATES IT IS THE CLIENT=S RESPONSIBILITY TO PROVIDE INFORMATION ABOUT HIS CIRCUMSTANCES SO THE WORKER IS ABLE TO MAKE A CORRECT DECISION ABOUT HIS ELIGIBILITY. FAILURE TO FULFILL HIS OBLIGATION MAY RESULT IN CASE CLOSURE, DENIAL OF APPLICATION, REDUCTION IN BENEFITS, AND REMOVAL OF AN INDIVIDUAL OR REPAYMENT OF BENEFITS.

DHS-3_____ BY NOT REPORTING THE CORRECT CIRCUMSTANCES REGARDING RESIDENCE OF CHILD FOOD STAMPS WERE OVER ISSUED FOR 3/11/04-8/04 \$669 AND 10/7/04-12/04 \$350.00

DHS-4_____ THE WVDHHR HAS REQUESTED THIS HEARING TO BE HELD FOR THE PURPOSE OF DETERMINING THAT MS. _____ COMMITTED AN INTENTIONAL PROGRAM VIOLATION (IPV). THE FEDERAL REGISTER ARTICLE 273.16 DEFINES AN IPV AS (1) MADE A FALSE OR MISLEADING STATEMENT, OR MISREPRESENTED, CONCEALED OR WITHHELD FACTS, OR (2) COMMITTED AN ACT THAT CONSTITUTES A VIOLATION OF THE FOOD STAMP PROGRAM REGULATIONS, OR ANY STATE STATUTE RELATING TO THE USE, PRESENTATION, TRANSFER, ACQUISITION, RECEIPT OR POSSESSION OF FOOD STAMP COUPONS= OR ATP=S.

DHS-5_____ CMCC DATED 3/11/04 CLIENT IN TO APPLY FOR FOOD STAMPS & MAO-ADDRESS AND DIRECTIONS VERIFIED BY CLIENT, RECEIVES UCI BENEFITS, NO ASSETS, VEHICLE HAS BEEN REPOSSESSED, SHELTER COST REPORTED, PRESENTED TERMINATION FROM AMERICAN WATER CO. WORKER APPROVED EA BENEFITS TO PAY THIS.

DHS-6_____ CAF DATED 3/11/04 APPLIED FOR FOOD STAMPS & MAO REPORTED 2 PERSON HOUSEHOLD, _____ AND SON BRANDON, REPORTED BEING DIVORCED, _____ COMPLETED 12TH GRADE, ABSENT PARENT REPORTED AS BEING _____, REPORTED VEHICLES 1997 HONDA ACCORD & 2003 DODGE NISSAN, REPORTED INCOME AS BEING CHILD SUPPORT \$500 PER MONTH & UCI BENEFITS \$283.80 MONTHLY, SHELTER COST \$300 TO _____, PAYS AEP, TELEPHONE, WATER & TRASH, SIGNATURE AFFIXED TO CAF STATING ALL IS COMPLETE AND TRUTHFUL.

DHS-7_____ RIGHTS & RESPONSIBILITIES AFFIXED WITH SIGNATURE ACCEPTING RESPONSIBILITY THEREOF.

DHS -8_____ CMCC DATED 3/23/04 CLIENT CALLED HAVING PROBLEMS WITH EBT CARD-WORKER ADVISED TO CALL HOTLINE TO RESET PIN#.

DHS-9_____ CMCC DATED 10/7/04 CLIENT IN OFFICE TO REAPPLY FOR FOOD STAMPS-WAS WORKING TEMPORARY CONTRACT JOB, INCOME WAS IRREGULAR, REPORTED SHELTER & UTILITY COST, REPORTS \$0 INCOME.

DHS-10_____ CAF DATED 10/7/04 REPORTS 2 PERSON HOUSEHOLD, _____ COMPLETED 12TH GRADE, REPORTS _____ AS BEING ABSENT PARENT, REPORTED 2 VEHICLES 1997 HONDA ACCORD & 2003 DODGE NISSAN, UNEARNED INCOME IS CHILD SUPPORT \$500 PER MONTH, PAYS RENT TO _____ \$300 PER MONTH, PAYS UTILITIES OF AEP, TELEPHONE, WATER,

SEWER & TRASH, SIGNATURE AFFIXED STATING ALL IS COMPLETE AND TRUTHFUL.

DHS-11____ RIGHTS & RESPONSIBILITIES AFFIXED WITH SIGNATURE ACCEPTING RESPONSIBILITY THEREOF.

DHS-12____ CMCC DATED 11/10/04 CLIENT IN OFFICE TO APLY FOR WV WORKS SCHEDULED APPOINTMENT FOR 11/19/04 1:00PM TO SEE A WORKER.

DHS-13____ CMCC DATED 11/19/04 WORKER RECORDED _____ DOES NOT LIVE IN KANAWHA COUNTY REFERRED HER TO PUTNAM COUNTY OFFICE, ALSO _____ REPORTED HAVING HER SON FROM FRIDAY'S AFTER SCHOOL UNTIL SCHOOL MONDAY MORNINGS, THIS IS LESS THAN 50% OF THE TIME.

DHS-14____ CMCC DATED 12/14/04 WORKER PLACED "NV" (NON-VERIFICATION) FOR SON AS _____ FAILED TO SUPPLY VERIFICATION OF LIVING ARRANGEMENTS-ALSO STOPPED MEDICAID AS SON NOT IN THE HOME MORE THAN 50% OF THE TIME.

DHS-15____ CMCC DATED 1/3/05 _____ IN ASKING ABOUT FOOD STAMPS AND CHECK, SHE ALSO SAID THAT SON WAS NOT IN THE HOME MORE THAN 50% OF THE TIME, HE STAYS WITH FATHER.

THAT DHS-16____ CAF DATED 2/28/05 PHONE CALL FROM _____ REPORTING SHE WAS LIVING IN SO. CHARLESTON WITH HER SISTER.

DHS-17____ CHAPTER 2.2 STATES IT IS THE CUSTOMERS RESPONSIBILITY TO REPORT CHANGES WITHIN 10 DAYS FROM THE DATE THE HOUSEHOLD BECAME AWARE OF THE CHANGE.

DHS-18____ CHAPTER 20.6 STATES MISREPRESENTATION MAY ALSO BE THE SUPPRESSION OF WHAT IS TRUE, AS WELL AS IN THE REPRESENTATION OF WHAT IS FALSE.

DHS-19____ IGBR 44 & 44A MAILED 5/26/05, RETURNED AND REMAILED 6/15 TO SO. CHARLESTON ADDRESS-RECEIVED IGBR44 BACK REQUESTING HEARING.

**RIGHTS & RESPONSIBILITIES: EVALUATION OF CLIENT=S
UNDERSTANDING OF AGENCY POLICY AND RECOMMENDATIONS.**

I RECOMMEND 12 MONTHS SANCTION FROM THE FOOD STAMP BENEFITS, CLIENT FAILED TO PROVIDE INFORMATION TO THE DEPARTMENT CONCERNING THE RESIDENCE OF CHILD.

CLIENT ADMITTED TO THE DEPARTMENT AFTER THE FACT THAT CHILD DID NOT RESIDE WITH FOR MORE THAN 50% OF THE TIME.

I RECOMMEND A SANCTION FROM THE FOOD STAMP BENEFITS FOR A PERIOD OF 12 MONTHS BE APPLIED, IN COMPLIANCE WITH FEDERAL REGISTER ARTICLE 273.16, ALSO REPAYMENT BE MADE IN ACCORDANCE WITH CHAPTER 20.2 BY COUPON REDUCTION, LUMP SUM PAYMENT OR MONTHLY PAYMENT. IF CLAIM BECOMES DELINQUENT IT WILL BE SUBJECT TO TAX INTERCEPT. DHS-20

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

VIII. CONCLUSIONS OF LAW:

The testimony and supporting documentation indicate that Ms. _____ failed to report that a child did not reside with her more than 50% of the time.

IX. DECISION:

It is the decision of this State Hearing Officer that Ms. _____ 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 December 2005.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of October, 2005.

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