



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

November 30, 2005

Ms. _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 29, 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 were aware of your responsibility to report any changes affecting your household, as verified by your signature on the Rights and Responsibilities section of the August 3, 2004 application. The record clearly states that you intentionally withheld facts about unearned income while receiving Food Stamp Benefits. This resulted in an over issuance of Food Stamp Benefits in the amount of \$3,366.00 for the period covering June 2004 through April 2005.

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 January 2006.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing 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: 05-BOR-6525

**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 November 30, 2005 for Ms. _____. 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 originally scheduled for October 18, 2005 on a timely appeal filed August 26, 2005. The Hearing Notice was issued via certified mail. The letter was returned and marked "UNCLAIMED." The hearing was rescheduled for November 29, 2005. Mrs. Butcher personally served the notification to Ms. _____ on November 18, 2005 (Exhibit D-12). On November 29, 2005, the hearing finally convened and, Ms. _____ was not in attendance.

It should be noted here that the defendant was not receiving benefits at the time of the hearing. A pre-hearing conference was not held between the parties and, Ms. _____ 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:

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:

- Exhibit -1 Case Comments 06/28/04
- Exhibit -2 Application dated 08/03/04 with attached Rights and Responsibilities
- Exhibit -3 Application dated 08/12/04
- Exhibit -4 Notice of Decision re: WV WORKS and Food Stamps dated 08/13/04
- Exhibit -5 School Clothing Allowance Application dated 08/12/04
- Exhibit -6 Low Income Energy Assistance Program (LIEAP) Application dated 12/09/04
- Exhibit -7 Case Comments dated 03/22/05
- Exhibit -8 RSDI Information Response Printout
- Exhibit -9 Food Stamp Claim Determination
- Exhibit -10 Rights and Responsibilities dated 08/12/04
- Exhibit -11 ADH Hearing Summary
- Exhibit -12 Documentation of Personal Delivery of ADH Notification dated 11/18/05
- Exhibit -13 IG-BR-30; 31; 44 and; 44a dated 10/18/05 (Rescheduled Notice)
- Exhibit -14 IG-BR-30; 31; 44 and; 44a dated 08/29/05 (Initial Notice)
- Exhibit -15 GroupWise Messages re: Scheduling

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:

I. IDENTIFYING INFORMATION

NAME: _____

ADDRESS: _____

AGE: 46

CASE #: _____

WORKERS INVOLVED DURING PERIOD IN QUESTION: Sheila Davis, Vonda Spencer, Sheree Smith, Kimberly Waugh, Patricia Hager, and Larry Wolfe

II. CASE DATA

DATE OPENED: June 28, 2004 DATE CLOSED: April 2005

OVERPAYMENT PERIOD: June 28, 2005 to April 30, 2005

ELIGIBILITY FACTOR INVOLVED: Failure to report Daughters Social Security Survivors Benefits.

III. SUMMARY OF FACTS

The Investigation Fraud Unit received a referral from the Income Maintenance Unit. _____ failed to report at application that she was receiving Survivor Benefits for both of her daughters. Because of this unreported income, an over issuance of Food Stamp Benefits occurred for the period covering June 28, 2004 through April 2005.

The West Virginia Department Health and Human Resources has requested this hearing for the purpose of determining if _____ 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 CMCC dated 6/28/04. Case Comments state that, Ms _____ was in the office to apply for benefits for her daughters. She was not eligible because they were receiving Medicaid benefits in another County. Ms. _____ could not be added until case is closed in the other County.

EXB-2 ES-2 dated 8/3/04. Ms _____ was in the office to apply for Emergency Assistance. She only reported her Social Security Income. She had a copy of SS benefits _____ received in 2002 but, no other income was reported.

EXB-3 ES-2 dated 8/12/04 - WV Works application. At this time, Ms. _____ read or had read to her the Rights and Responsibilities (R&R) accepting all statements were true and correct to the best of her knowledge.

EXB-4 Approval Letter dated 8/13/04 for WV Works and Food Stamp Benefits. The calculations do not show any Social Security Survivor Benefit Income was reported and used against the Check or Food Stamps.

EXB-5 Application for School Clothing Voucher dated 8/12/04 also shows no income reported by Household.

EXB-6 LIEAP Application dated 12/9/04. The only income Ms. _____ reported was the WV Works check in the amount of \$317.00.

EXB-7 CMCC dated 3/22/05 states that FEFU had discovered Child _____ was not in _____'s household. Daughter _____ receives \$681.00 in Survivor Social Security Benefits. _____ has received _____'s benefits of \$681.00 at her address, even though _____ has not lived there for a year along with her own amount of Survivor benefits.

EXB-8 Printout from WV State On Line Query RSDI Information Response. Indicates _____, _____ and _____ have been receiving Social Security Survivor Benefits since December 2001 and, _____ failed to report this income at the time of application.

EXB-9 Food Stamp Claim Determination Sheet showing the amount of benefits Ms. _____ received from June 28, 2004 to April 2005 and, the corrected amount she should have received.

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

EXB-10 Rights and Responsibilities signed 8/12/05 and client agreed to the statements such as item # 44 "I understand if I give incorrect or false information or if I fail to report changes that I am required to report, I may be required to repay any benefits I receive. I may also be prosecuted for fraud and I understand that any information given is subject to verification by an authorized representative of the DHHR. Also, it is understood that any person who obtains or attempts to obtain welfare benefits from the DHHR by means of a willfully false statement or misrepresentation or impersonation or any other fraudulent device can be charged with fraud. Punishment upon conviction may be a fine up to \$5000.00 and/or a jail sentence of 5 years in jail. For the Food Stamp Program Only - federal penalties may include a maximum fine of \$250,000.00 and a jail sentence of up to 20 years."

Along with this is item # 47. "I certify that all statements on this form have been read by me or to me and that I understand them. I certify that all the information I have given is true and correct and I accept these responsibilities."

Ms _____ checked yes to both of these statements and, knew she was not giving true and correct information at the time of application. If so, she would have provided the Social Security Income.

I am requesting a 12 month sanction for the first offence of an Intentional Program Violation for Ms _____ and, for her to repay the Department \$3,366.00 for over issued Food Stamps received from June 2004 through April 2005.

- 4) The Department provided verification, by way of a Food Stamp Disbursement Printout attached to Exhibit -2 that, Ms. _____ received Food Stamp Benefits prior to the August 3, 2004 application.

VIII. CONCLUSIONS OF LAW:

Common Chapters Manual, Chapter 700, Appendix A, Section B, states, "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."

Ms. _____ was aware of her responsibility to report any changes affecting her household, as verified by her signature on the Rights and Responsibilities section of the August 3, 2004 Food Stamp application. The record clearly states that Ms. _____ had an opportunity to report all Social Security Income received by her household, on at least three (3) separate occasions i.e., (1) On June 28, 2004 Ms. _____ applied for benefits for her household; (2) An August 3, 2004 Food Stamp Application and finally; (3) The LIEAP Application completed on August 9, 2004.

Ms. _____ committed an intentional program violation by misrepresenting her total household income and, by failing to report the unearned income in a timely manner. This resulted in an over issuance of Food Stamp Benefits in the amount of \$3,366.00 for the period covering June 2004 through April 2005.

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 January 2006.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of November, 2005.

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