



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 23, 2005

Mr. _____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 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 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 April 13 2004 application. The record clearly states that you intentionally withheld facts about earnings and employment while receiving Food Stamp Benefits. This resulted in an over issuance of Food Stamp Benefits in the amount of \$560.00 for the period covering July 2004 through November 2004.

It is the decision of this State Hearing Officer 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; Danita Bragg, Repayment Investigator

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

_____,

Defendant,

v.

Action Number: 05-BOR-6538

**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 23, 2005 for Mr. _____. 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 6, 2005 on a timely appeal filed August 30, 2005. Mrs. Danita Bragg requested to reschedule the hearing due to mandatory training. The hearing finally convened on November 18, 2005.

It should be noted here that the defendant was receiving Food Stamp Benefits at the time of the hearing. A pre-hearing conference was not held between the parties prior to the hearing and; Mr. _____ did not have legal representation. Mr. _____ did not attend the scheduled hearing.

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:

Mrs. Dania Bragg, 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:

- D-1 Food Stamp Claim Determination
- D-2 Food Stamp Calculation Sheet
- D-3 Food Stamp Issuance History – Disbursement
- D-4 Food Stamp Allotment Determination
- D-5 Employment Data – Saunders Staffing Services, Inc.
- D-6 Employment Verification – Georgia Pacific
- D-7 Rights and Responsibilities 04/13/04
- D-8 WVIMM 2.2 B. REPORTING REQUIREMENTS
- D-9 WVIMM 20.2 FOOD STAMP CLAIMS AND REPAYMENT PROCEDURES
- D-10 CFR § 273.16 Disqualification for intentional Program Violation
- D-11 Rescheduled Notice dated 09/01/05
- D-12 IG-BR-30; 31; 44 & 44a
- D-13 ADH Summary

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. Danita Bragg's Administrative Disqualification Summary:

I. IDENTIFYING INFORMATION

NAME: _____

ADDRESS: _____

AGE: 34

CASE #: _____

WORKERS INVOLVED DURING PERIOD IN QUESTION: EW1055 - Angela Loeffler, and Change Center worker CC2092.

II. CASE DATA

DATE OPENED: 10/28/03 DATE CLOSED: 11/30/04

OVERPAYMENT PERIOD: July 2004 through November 2004

AMOUNT OF FOOD STAMPS OVERISSUED: \$560.00

ELIGIBILITY FACTOR INVOLVED: Unreported earned income in the home which resulted in over issuance of Food Stamps.

III. SUMMARY OF FACTS

On November 3, 2004, the Investigations and Fraud Management Unit received a referral for repayment on the case of _____. The reason for the over payment referral was unreported earned income in the home. Mr. _____ did not report several different jobs during this time period. Mr. _____ was employed by Saunders Staffing Services May 19, 2004 through August 15, 2004. This income was not reported or verified by Mr. _____. Mr. _____ was then employed by Georgia Pacific from 08/16/04 through 01/25/05. Mr. _____ reported none of the above income and continued to receive food stamps based on zero income. Mr. _____ did contact the change center by phone on October 29, 2004, informing them he was moving out of state and requesting case closure. This Repayment Investigator has received verification of Mr. _____'s dates of employment and income received. Repayment Investigator had scheduled Mr. _____ into the Fayette County Office several times before we managed to meet on June 28, 2005. At that time Mr. _____ stated he did not feel he intentionally withheld information from the Department of Health and Human Resources and checked the IG-BR-44 form Item #3 stating he has read the Waiver of Administrative Disqualification Hearing and requests his right to an administrative hearing. Because of the nature of the claim, it has been pursued as an Intentional Program Violation (IPV). The Code of Federal Regulations, Sec. 273.16(c) states that

an IPV consists 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 or ATP's. Mr. _____ has opted not to sign a waiver of the Administrative Disqualification Hearing (ADH). This ADH has been requested to establish an IPV with a one (1) year sanction from the Food Stamp program, with repayment of the over issued Food Stamps in the amount of \$560 resulting from her IPV.

DHS-1: Agency Form ES-FS-S, Food Stamp Claim Determination Form. This form shows the calculation of the Food Stamp over issuance. The over issuance is determined by comparing the actual amount of Food Stamps issued to the household with the corrected amount of Food Stamps. These amounts are shown on the right and left-hand columns of the form, respectively. The corrected amounts are determined by recalculating Food Stamp allotments with the excluded eligibility factor, which, in this case is unreported earned income. The total overpayment of \$560 for this claim period is shown at the bottom of the form, inside the block marked "Loss to Program".

DHS-2: Agency Form ES-FS-Sa, Food Stamp Calculation Sheet. This form shows an itemized breakdown of the over issuance shown in DHS-1. The "Corrected" side of the form corresponds with the "Corrected" side of the ES-FS-5 (DHS1). The "Actual" side is shown in the EFAD screen prints from the RAPIDS computer system (DHS-4).

DHS-3: IQFS Screen Prints from the RAPIDS Computer System. This screen print shows the amount of Food Stamps issued to Mr. _____ during the claim months. The amounts under the heading "Issued Amt" correspond with the actual coupon allotments in DHS-1 and DHS-2.

DHS-4: EFAD Screen Prints from the RAPIDS Computer System. These screen prints show the calculation of the Food Stamp allotments at the time they were issued. They do not include the incorrect eligibility factor of unreported income. They are the basis of the "Actual" side of the ES-FS-5a (DHS-2).

DHS-5: Payroll Information from Saunders Staffing. This information shows Mr. _____ was employed May 19, 2004, through August 14, 2004. Also Amount of pay received each pay period is included.

DHS-6: Payroll Information from Georgia Pacific. This information shows Mr. _____ was employed August 16, 2004, and continued to work through January 25, 2005. Also shows amount of pay received each pay period.

2004. **DHS-7: Copy of Rights and Responsibilities.** Signed by Mr. _____ April 13, On this form Item 6 states: I understand if I am found (by court action or an Administrative Disqualification Hearing) to have committed an act of intentional program violation, I will not receive food stamp benefits as follows: First Offense - One Year, Second Offense - two years, Third Offense - permanently. In addition, I will have to repay any benefits received for which I was not eligible. Item 44 states: 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 by impersonation of any other fraudulent device can be charged with fraud. Punishment upon conviction may be a fine up to \$5,000 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 and a jail sentence up to 20 years.

DHS-8: Copy of Income Maintenance Manual Chapter 2.2B (Reporting Requirements).

DHS-9: Copy of Income Maintenance Manual Chapter 20.2 (Repayment of Food Stamps)

DHS-10: Copy of Federal Guidelines, Food and Nutrition Services, USDA Section 273.16, 7 CFR CH. 11, Pages 741-762.

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

This client has received benefits through the WV DHHR periodically since October 28, 2003. He has reported moving out of state and has been instructed to report changes during his reviews. He is aware and has been informed of the need to report accurate information during applications and reviews. For this reason we are asking that a first offense, 12 month IPV sanction to be applied against Mr. _____. Additionally repayment of \$560.00 in over issued food stamps is requested.

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."

Mr. _____ was aware of his responsibility to report any changes affecting his household, as verified by his signature on the Rights and Responsibilities section of the April 13, 2004 application. The record clearly states that he intentionally withheld facts about earnings and employment while receiving Food Stamp Benefits. This resulted in an over issuance of Food Stamp Benefits in the amount of \$560.00 for the period covering July 2004 through November 2004.

IX. DECISION:

It is the decision of this State Hearing Officer that Mr. _____ committed an Intentional Program Violation. He 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 23rd Day of November, 2005.

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