



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 10, 2005

Ms. _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 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 earned and/or unearned income, on the applications dated July 30, 1999 and October 15, 1999, respectively. The Department failed to provide applications and/or supporting documentation for the months July 1997 through July 29 1999, to determine if you did not report earned and/or unearned income. This resulted in an over issuance of Food Stamp Benefits in the amount of \$1,952.00 for the period covering August 1999 through May 2000, rather than \$6,076.00 for the period covering July 1997 through May 2000.

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 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
Todd Thornton, Repayment Investigator

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

_____,

Defendant,

v.

Action Number: 05-BOR-6539

**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 10, 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 scheduled for October 18, 2005 on a timely appeal filed August 30, 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 held between the parties prior to the hearing and; Ms. _____ did not have legal representation. The State Hearing Officer advised Ms. _____ that she was not required to provide any testimony. If she did not, the decision would be based solely on the information presented by the Department.

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
Todd Thornton, Repayment Investigator
Trish Kerbawy, Repayment Supervisor

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 Issuance History – Disbursement
- D-3 Food Stamp Calculation Forms
- D-4 Food Stamp Allotment Determination
- D-5 Employment Verification Letter dated 08/11/00
- D-6 Benefit Payment History
- D-7 Application and Rights and Responsibilities dated 07/30/99
- D-8 Application and Rights and Responsibilities dated 10/15/99
- D-9 A D H Summary
- D-10 IG-BR-30; 31; 44; 44a

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. Todd Thornton's Administrative Disqualification Summary:

I. IDENTIFYING INFORMATION:

NAME: _____
ADDRESS: _____
AGE: 39
CASE #: _____

WORKERS INVOLVED DURING PERIOD IN QUESTION: Kathy Boyd, Toney Light, Sonja McKinney, Gayle Dillon

II. CASE DATA:

DATE OPENED: 5/97 (in RAPIDS)
DATE CLOSED: N/A (open)
OVERPAYMENT PERIOD: 7/97 - 5/00
AMOUNT OF FOOD STAMPS OVERISSUED: \$6076.00
ELIGIBILITY FACTOR INVOLVED: Earned Income, unearned income

III. SUMMARY OF FACTS:

The Investigations and Fraud Management Unit received a referral from the Income Maintenance Unit regarding the case of _____. Because of unreported earned income and unearned income during the claim period from 7/97 to 5/00, Ms. _____'s household was overpaid \$6076.00 in food stamps. Because of the duration and amount of the claim, and because this information was withheld at review, an Intentional Program Violation 1st Sanction of 12 months is requested.

The Code of Federal Regulations defines an Intentional Program Violation (IPV) in 7 CFR 273.16 as "_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 for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

DHS-1: ES-FS-5 Food Stamp claim determination forms. These forms show, for all months in the claim period, the actual and corrected coupon entitlements to the household. The food stamp claim amount is shown at the bottom of the first form in the box labeled "Loss to Program."

DHS-2: IQFS screen prints from RAPIDS computer system. These screen prints show the amount of food stamps issued to the household during the claim period. These amounts correspond with the actual amounts shown in DHS-1.

DHS-3: Food Stamp calculation forms. These forms show the corrected food stamp calculations for the household for all claim months. The left hand side of the form is determined in RAPIDS, and the right hand side of the form is determined by correcting elements in error; in this case, unreported earned and unearned income. The corrected coupon entitlements on these forms are the basis for the corrected amounts shown in DHS-1.

DHS-4: EFAD screen prints from RAPIDS computer system. These screen prints show the calculations RAPIDS used to determine the food stamp entitlement at the time the case was issued benefits. These entitlement amounts are the basis of the actual amounts shown in DHS-1 and DHS-2.

DHS-5: Employment verification. This verification, provided by the employer, is the basis for determining countable earned income added into the food stamp calculations in DHS-3 for all months that earned income was not reported.

DHS-6: Unemployment verification. These screen prints from the West Virginia Bureau of Employment Programs (BEP) are the basis for determining countable unearned (unemployment) income added into the food stamp calculations in DHS-3 for all months that unearned income was not reported.

DHS-7: Application and rights and responsibilities form dated 7/30/99. The review completed on 7/30/99, within the claim period, makes no mention of earned or unearned income. Ms. _____ signed the application signature page, which states in part, "I understand that it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits to which I am not by law entitled. Under penalty of perjury, I certify that the statements are true and correct." Ms. _____ also signed the OFS-RR1 Rights and Responsibilities form. This form reads, in statement #6, "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 be disqualified from participating in the Food Stamp Program as follows: First Offense - one (1) year; Second Offense two (2) years; Third Offense - permanently. In addition, I will have to repay any benefits received for which I was not eligible."

DHS-8: Application and rights and responsibilities form dated 10/15/99. The review completed on 10/15/99, also within the claim period, makes no mention of earned income or unemployment income. Again, Ms. _____ signed the application and OFS-RR1, stating that she was providing truthful information and expressing that she was aware of the penalties for not providing truthful information.

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

Ms. _____ has been known to this agency since at least 5/97. Since that time, she has completed numerous applications and reviews. She has read, or had read to her, the rights and

responsibilities of the Food Stamp Program at these reviews. For a period of time extending from 7/97 through 5/00, Ms. _____ did not report earned and unearned income at, or between, reviews of eligibility. The resulting over issuance of food stamps totals \$6076.00. Because of the duration and amount of this claim, an Intentional Program Violation (IPV) first sanction of twelve months is requested against _____. It is also requested that the household be required to repay this amount to the agency.

4) Ms. _____ did not provide any testimony that, would dispute the act of committing an intentional program violation by withholding facts about earned and/or unearned income on the applications dated July 30, 1999 and October 15, 1999, respectively.

5) The Department failed to provide applications and/or documentation that, Ms. _____ failed to report earned and/or unearned income for the period July 1997 through July 29, 1999. It could not be determined if Ms. _____ did not report earned and/or unearned income. This would result in an over issuance of Food Stamp Benefits in the amount of \$1,952.00 for the period covering August 1999 through May 2000, rather than \$6,076.00 for the period covering July 1997 through May 2000. The following information was gathered from Exhibit D-1: (Benefits Received 08/99 – 05/00) \$3,003.00 – (Corrected Benefits 08/99 – 05/00) \$1,051.00 = \$1,952.00 Over Issued Benefits.

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.”

The Department failed to provide applications and/or documentation that, Ms. _____ failed to report earned and/or unearned income for the period July 1997 through July 29, 1999. It could not be determined if Ms. _____ did not report earned and/or unearned income. This would result in an over issuance of Food Stamp Benefits in the amount of \$1,952.00 for the period covering August 1999 through May 2000, rather than \$6,076.00 for the period covering July 1997 through May 2000.

Ms. _____ did not provide any testimony that, would dispute the act of committing an intentional program violation by withholding facts about earned and/or unearned income.

IX. DECISION:

It is the decision of this State Hearing Officer that Ms. _____ acted to commit an Intentional Program Violation, by withholding facts about her earned and/or unearned income. 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 10th Day of November, 2005.

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