



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 20, 2005

Ms. _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 4, 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 received simultaneous Food Stamp Benefits in the State of Louisiana and the State of West Virginia in January 2005. There were no available records indicating you reported a change in residence. Your Food Stamp Pin Number did not change from November 2004 through January 2005. This resulted in an over issuance of Food Stamp Benefits in the amount of \$274.00 for the period covering January 1, 2005 through January 31, 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 ten (10) years. 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; Jennifer Butcher, 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 20, 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 originally scheduled for August 16, 2005 on a timely appeal filed June 1, 2005. The Hearing Notice was issued via certified mail to Ms. _____'s last known address in the State of Louisiana. On the day of the scheduled hearing the certified mail receipt had not been returned. The hearing was rescheduled for October 4, 2005. Mrs. Butcher planned to have Ms. _____ personally served by the State of Louisiana's Fraud Detection and Fraud Recovery Unit in Shreveport, Louisiana. On September 7, 2005, Mrs. Butcher requested to withdraw her hearing request due to the damages created by Hurricane Katrina, until Ms. _____ could be located. Ms. _____ signed a "Documentation of Personal Delivery of Administrative Disqualification Hearing Notification" on September 13, 2005, notifying her of the hearing. On October 4, 2005, the hearing was convened.

It should be noted here that the defendant was not receiving benefits at the time of the hearing. A pre-hearing conference was 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:

_____, Defendant
_____, Mother
_____, Sister
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:

- D A D H Summary
- D-1 Application dated 11/06/03 and Rights and Responsibilities dated 11/06/03
- D-2 Benefit Recovery Referral dated 01/13/05
- D-3 WV EBT Production System Detail Journal Inquiry Printout
- D-4 Fraud & Recovery Shreveport Region Report dated 04/20/05
- D-5 Food Stamp Claim Determination
- D-6 Notification of Intent to Disqualify dated 04/22/05
- D-7 Certified Mail Receipts dated 05/17/05
- D-8 WVIMM Section 8.2 RESIDENCE
- D-9 Rescheduled Hearing Notice dated 08/17/05
- D-10 Memorandum from Mrs. Butcher to the State Hearing Officer dated 08/25/05
- D-11 Letter to State of Louisiana Fraud & Recovery Unit dated 08/26/05
- D-12 Memorandum from Mrs. Butcher to the State Hearing Officer dated 09/07/05
- D-13 Serving Site Waiting List Printout
- D-14 Documentation of Personal Delivery of A D H Notification dated 09/13/05
- D-15 Memorandum from Mrs. Butcher to the State Hearing Officer dated 10/04/05

Claimants' Exhibits:

C-1 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 8.2 (A) 1) RESIDENCE Food Stamps:

To be eligible to receive benefits, the client must meet the eligibility requirement of residence.

The client must live within the borders of West Virginia. Intent to remain permanently in West Virginia is not a requirement, although the client must reside in the State for purposes other than vacation or visitation. A time limit cannot be set for how long the client must live in West Virginia. The client cannot be required to maintain a permanent or fixed dwelling.

An individual remains a resident of the former state until he arrives in West Virginia with the intention of remaining indefinitely. Therefore, intent to establish or abandon residency must be known before the state of residence is determined.

A. FOOD STAMPS

1. Determining State of Residence/Movement Between States

NOTE: If the Food Stamp benefit group is Categorically Eligible, the residency requirement is considered met. See Chapter 1 for more information about Categorical Eligibility.

When an individual, who is receiving Food Stamps in another state, establishes residence in West Virginia and applies for benefits the Worker must determine when Food Stamp benefits in the other state were stopped. The individual is eligible in West Virginia for the month following the month he last received benefits in the former state of residence, if otherwise eligible.

3) 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.

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

I. IDENTIFYING INFORMATION

NAME: _____

ADDRESS: _____

AGE: 24

CASE #: _____

WORKERS INVOLVED DURING PERIOD IN QUESTION: Jonnie Tomer, Susan Pauley and Patricia Hager

II. CASE DATA

DATE OPENED: October 1999 DATE CLOSED: January 2005

OVERPAYMENT PERIOD: January 2005

ELIGIBILITY FACTOR INVOLVED: Client received Food Stamps in the State of Louisiana while receiving Food Stamp benefits in the State of West Virginia.

III. SUMMARY OF FACTS

The Investigation Fraud Unit received a referral from the Front End Fraud Unit.

Ms _____ has been receiving benefits in Louisiana and in West Virginia at the same time. Because of the double dipping an over issuance of Food Stamps occurred for the period of January 2005.

The West Virginia Department Health and Human Resources has requested this hearing to be held for the purpose of determining that _____ 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 ES 2 review dated November 6, 2003 was completed and the Rights and Responsibilities were read by her or to her and she signed accepting the responsibilities to report changes.

EXB-2 BVRF referral dated 1/13/05 from FEFU stating client moved to Louisiana and failed to report. This has been verified through EBT transactions from 12/04.

EXB-3 EBT Detail journal Inquiry screen showing date time amount of transaction card number and location where card was used. As you can see the card was used on 12/08/04 for \$61.66 at Magnolia Supermarket. On 01/8/05 \$3.50 was spent at KIM Food Supermarket and again on 01/8/05 \$270.00 was spent at Magnolia Supermarket, All of these stores are located in New Orleans, Louisiana.

_____ receiving

EXB-4 Verification from the Fraud and Recovery Shreveport Region provided by the Fraud Detection Unit Supervisor Kathy Long. States from the printout that Ms applied for and received Food Stamp Benefits in Louisiana on 12/14/04

\$125.00 starting in December 2004 through November 2005. The printout also provides Ms. _____ current address of _____.

EXB-5 Food Stamp Claim Determination sheets completed shows that she was not eligible to receive Food Stamps benefits in the state of West Virginia in January 2005 due to also receiving in Louisiana in the same month.

EXB-6 IG-BR 44,44a and a repayment agreement was mailed to Ms _____ on 4/22/05 explaining that she had committed an Intentional Program Violation by receiving benefits in two states at the time.

EXB-7 Verification from US Postal Service showing that Ms _____ signed for the registered letter on 5/17/05. And was returned to me stamped dated 5/19/05.

EXB-8 Income Maintenance Manual Chapter 8.2 Residence, states to be eligible to receive benefits the client must live within the borders of West Virginia. Although the client must reside in the state for the purposes other than vacation or visitation.

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

Ms _____ moved from this state in December 2004 and established residency in Louisiana and applied for benefits in that state on December 14, 2004. The client failed to report to the Department that she had moved, so her case remained open for January 2005. If she had reported timely the Food Stamps case in West Virginia would have been closed effective January 1, 2005.

I am requesting that 10 year Intentional Program Violation sanction for double dipping is placed on Ms _____ and that she repay the Department the sum of \$ 274.00.

EXB-9 Letter was sent VIA certified mail to Ms _____ dated August 17, 2005 to reschedule the ADH for October 4, 2005 at 9:00 a. m. Was returned without the receipt being signed. The ADH could not be held without proper notification.

EXB-10 On August 25, 2005 a memo was sent to Ray Woods State Hearings Officer notifying him that I have contacted Mr. Peyan Supervisor of the New Orleans area Fraud Recovery Unit for the state of Louisiana and he and his staff is willing to hand deliver the appointment letter to Ms _____ and then notify me by a completed form stating that the letter was delivered. Copy of letter sent to Mr. Peyan is **EXB-11**

EXB-12 Memo dated September 7, 2005 to Mr. Woods requesting withdraw of the Hearing for Ms _____ due to the recent Hurricane Katrina hitting New Orleans, La.

EXB-13 On September 13, 2005 Ms. Debbie Cooper my colleague was reviewing the daily list of client to be seen by workers and, saw _____ name on the list. I proceeded to collect all the paper work and go out and deliver the hearing papers to Ms. _____.

EXB-14 Ms _____ signed the IG-BR- 44c stating the hearing papers were delivered and she accepted the letter. She also continues to state that she had no idea that the stamps were being used. She said the card was stolen. The person who used the card had to know the pin number in order to use the card. Regardless if Ms _____ had the card or if it was stolen, the card was still active because it was never closed out for the month of January 2005. She was still responsible for any action on that card.

Again I state that Ms. _____ or someone she knew used the card while receiving benefits in another state. Regardless who used the card Ms _____ had to give her the pin number to access the account and the card was used.

5) Ms. _____ disputes the claim that she never informed the State of West Virginia of relocating to the State of Louisiana. According to Ms. _____, she called her assigned Case Worker using her sister's cellular telephone from Louisiana, to report the change in residence. Ms. _____ testified that she always called her Case Worker regarding changes rather than calling the Statewide Change Center. She assumed her EBT card would be cancelled after talking with Department Personnel. When Ms. _____ moved to Louisiana she stored her personal belongings, which included her Food Stamp Electronic Benefits Transfer (EBT) card, at another sister's home. She believes her sister may have used the card without her knowledge, either by finding the EBT card and obtaining the pin number from her son or, calling West Virginia and changing the pin number.

6) Ms. _____'s mother, Ms. _____, supports the belief that one of her daughters may have used the EBT card inappropriately. The daughter in question has been and continues to be a problem within the family. Ms. _____ disagrees with the Department's proposal that her daughter, _____, should suffer for another sister's actions.

7) Mrs. _____, sister, also supports the statements provided by her mother and sister, _____. According to Mrs. _____, the sister in question is not permitted to stay in her family's home because of her untrustworthiness. Mrs. _____ explained that their other sister was questioned about groceries purchased when she did not have available funds to purchase such items. This occurred during the month of January 2005.

8) In an effort to determine the validity of Ms. _____' claim of someone changing her EBT pin number, the State Hearing Officer requested Mrs. Butcher to obtain verification of a possible change. Ms. _____ was advised by the State Hearing Officer if the EBT pin number had not been changed, the Department's proposal would be upheld, in the absence of any verification to support her statements. Mrs. Butcher provided information labeled as Department Exhibit D-15 in response to the State Hearing Officer's request. It stated, "According to the attached, there has not been any change in pin number from November 2004 through January 2005. I am sending this information to Ms. _____ as well." Attached to the October 4, 2005 Memorandum from Mrs. Butcher was a printout from the West Virginia EBT Production System Card History Inquiry, to dispute Ms. Tyleemah _____' suggestion that her EBT card pin number may have been changed.

VIII. CONCLUSIONS OF LAW:

1) Persons who are excluded by law are ineligible and may not be a separate Assistance Group. The periods of ineligibility are as follows: Receipt of simultaneous multiple benefits as determined by an ADH or conviction in a state or federal court, due to a fraudulent statement with respect to identity or place of residence for a period of 10 years.

2) Ms. _____ received simultaneous Food Stamp Benefits in the State of Louisiana and the State of West Virginia in January 2005. There were no available records indicating Ms. _____ reported a change in residence. Ms. _____ Food Stamp Pin Number _____ did not change from November 2004 through January 2005. This resulted in an over issuance of Food Stamp Benefits in the amount of \$274.00 for the period covering January 1, 2005 through January 31, 2005. Ms. _____ could not provide documentation to support her statements that someone, other than herself, used the EBT card in January 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 ten (10) years. 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 20th Day of October, 2005.

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