



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

December 2, 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: The Department could not prove through clear and convincing evidence that, the absent parent lived in your household for the period covering October 2003 through May 2005.

It is the decision of the State Hearings Officer to REVERSE the PROPOSAL of the Department that you committed an Intentional Program Violation.

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-6785

**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 December 2, 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 November 29, 2005 on a timely appeal filed October 17, 2005. The Scheduling Notice was mailed via First Class Mail on October 17, 2005 (**Exhibit -12**).

It should be noted here that the defendant was 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:

_____, Defendant
Jennifer Butcher, Repayment Investigator
Michael Kidd, Licensed Private Investigator – Kidd Investigations, Inc.

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 Application dated 08/25/03
Exhibit -2 Personal Responsibilities Contract (PRC) dated 08/29/03
Exhibit -3 Report from Kidd Investigations, Inc.
Exhibit -4 Application dated 12/17/04
Exhibit -5 Application dated 02/07/05
Exhibit -6 Benefit Recovery Referral dated 07/19/05
Exhibit -7 Absent Parent General Information Printout
Exhibit -8 Employee Wage Data
Exhibit -9 WVIMM 9.1 FOOD STAMP ELIGIBILITY GROUPS
Exhibit -10 Food Stamp Claim Determination
Exhibit -11 ADH Hearing Summary
Exhibit -12 IG-BR-30; 31; 44 and; 44a dated 10/17/05

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) The Investigation Fraud and Management Unit received a referral from the Income Maintenance Unit on July 19, 2005 (**Exhibit -6**). Ms. _____ allegedly failed to report that the father of her child, (_____), had been living in the home with her and the child since October 2003. Ms. _____'s failure to report the absent father in the home and, his income, created an over issuance of Food Stamp Benefits, for the period covering October 2003 through May 2005. It must be noted that, the IFM referral contained comments by a former employee of the Department. The State Hearing Officer explained the 'Hearsay Rule' to Ms. _____ as it pertained to her being unable to cross-examine the former worker regarding her comments. If she objected, the "Comments" in the referral would not be considered in the final decision. Ms. _____ objected to any reference to the "Comments" and only the referral itself would be considered.

The West Virginia Department Health and Human Resources requested this hearing for the purpose of determining that _____ committed an Intentional Program Violation (IPV); Owes a repayment of \$1,603.00 in over issued Food Stamp Benefits (**Exhibit -10**) and; Sanctioned from the Food Stamp Program for a period of one (1) year.

4) Ms. _____ completed an application on August 25, 2003 for Food Stamps, West Virginia Works and, a Medical Card (**Exhibit -1**). The Rights and Responsibilities were read by or to Ms. _____. By signing the Rights and Responsibilities section of the application, Ms. _____ agreed to accept all of the relevant information, as true and correct to the best of her knowledge. Ms. _____ reported that only she and her daughter, _____, were living in the home.

5) A Personal Responsibility Contract was completed and signed by Ms. _____ on August 29, 2003 (**Exhibit -2**). It stated in part, "She would report any changes in her household within 10 days of them occurring."

6) On February 10, 2004, the Child Advocate Office sent a referral to WV Works Worker Melisa Green that, _____ father of the child, was living with _____. The initial referral was received by the Child Advocate Office, through a Licensed Private Investigator, hired to serve legal notices. This referral was later forwarded to the Front End Fraud Unit (FEFU) for further investigation.

The report received from Mr. Michael Kidd, of Kidd Investigations, Inc., (**Exhibit -3**), explained his attempts to serve a summons on _____. The address supplied by the Child Advocate Office was the same for Ms. _____. According to Mr. Kidd's testimony, the person who answered the door and denied he was _____, was the same person served at the listed employer. Mr. Kidd could not state with certainty that _____ lived with Ms. _____ or, that a Postal Verification does nothing more than verify mail delivery.

Ms. _____ disputed the letter submitted by Mr. Kidd to the Child Advocate Office. According to Ms. _____'s testimony, the absent parent visits his daughter on a regular basis.

7) Ms. _____ completed a review of her Food Stamps, WV Works and, Medical Benefits on December 17, 2004 (**Exhibit -4**). Again, Ms. _____ stated that only she and _____ were the only persons in the household. The Rights and Responsibility section was also signed, affirming that all reported information was true and correct to the best of her knowledge.

8) An Emergency Assistance application for housing was taken on February 7, 2005 (**Exhibit -5**). The rental home in which Ms. _____ had been living, located at _____, West Virginia, had been sold and; she was required to move as of January 31, 2005. Ms. _____ moved to _____, West Virginia. Again, she reported only two in the household.

9) An "Absent Parent General Information Printout" obtained through the Child Advocate Office data base on September 27, 2005, lists the addresses for the Caretaker (Ms. _____) and, the Absent Parent (_____). The information indicates Ms. _____ and Mr. _____ had the same mailing address (**Exhibit -7**). The Department attached a signed statement from Ms. _____ dated June 3, 2005 with this Exhibit. The Statement was taken by a former Front End Fraud Investigator. According to the Statement and Ms. _____'s testimony, _____ Did not live at her address.

10) The Department provided an "Employee Wage Data Printout" (**Exhibit -8**), providing income and addresses for _____ and _____. The reported address for Mr. _____ and Ms. _____ were the same.

According to Ms. _____, Mr. _____ used her address only to receive mail. She consented to the arrangement after Mr. _____ reported his mail being stolen at his address. Ms. _____ wanted to submit notarized exhibits from Mr. _____ and, his mother regarding his address. Ms. Butcher objected to the letters because neither was available for cross-examination. The State Hearing Officer upheld the objection.

11) West Virginia Income Maintenance Manual Chapter 9.1A (c) (3) (**Exhibit -9**), states "Parents living with their natural or adoptive children or stepchildren who are under 22 years of age and such children living with such parents are assumed to purchase and prepare their food together and, therefore must be in the same Assistance Group."

12) The State Hearing Officer reversed the Department's proposed action at the conclusion of the hearing, based on a lack of verifiable proof of Mr. _____'s residence. The Department advised the Defendant that they would pursue the matter as an unintentional program violation. The State Hearing Officer expressed his concern that a "proof of residence" was not established.

VIII. CONCLUSIONS OF LAW:

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) The Department failed to provide verifiable proof that the absent parent lived at the same address as the Defendant i.e., Witnesses, Neighbors and/or Absent Parent; Rental Agreements or; Utility Statements in the name of the Absent Parent. Even the Licensed Private Investigator could not state with certainty that the absent parent lived with the Defendant.

Ms. _____ reported on several occasions as documented by the Department's Exhibits 1, 2, 4 and, 5 that the absent parent did not live at her address. It was not shown by clear and convincing evidence that the defendant, _____, committed an intentional program violation.

IX. DECISION:

It is the decision of this State Hearing Officer that Ms. _____ did not commit an Intentional Program Violation.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd Day of December, 2005.

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