



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Bob Wise
Governor

Paul L. Nusbaum
Secretary

January 5, 2005

Dear Ms. _____ :

Attached is a copy of the findings of fact and conclusions of law on your Administrative Disqualification Hearing held November 9, 2004.

In arriving at a decision, the State Hearing 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.

Intentional Program Violations shall consist 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. Individuals found to have committed an act of Intentional Program Violation will be ineligible for a specified time determined by the number of previous Intentional Program Violation disqualifications. (West Virginia Income Maintenance Manual § 20.2 and Code of Federal Regulations-7 CFR § 273.16)

The information submitted at the hearing failed to provide clear and convincing evidence that you resided in Ohio instead of West Virginia for the period of March 2004 through June 2004. Therefore, there is no evidence that you received Food Stamp benefits to which you were not entitled.

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to disqualify you from the Food Stamp Program for twelve (12) months based on the commission of an Intentional Program Violation.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Teresa Smith, SRI, DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND 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 January 5, 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 hearing was convened on November 9, 2004.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The **Food Stamp Program** is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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 food coupons to households who meet the eligibility criteria established by the Food and Nutrition Service of the U. S. Department of Agriculture.

III. PARTICIPANTS:

Teresa Smith, SRI, DHHR Representative

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question is whether the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in the Food Stamp Program.

V. APPLICABLE POLICY:

7 CFR § 273.16 USDA Code of Federal Regulations

Common Chapters Manual Chapter 700 Appendix A

West Virginia Income Maintenance Manual Sections 1.2, 1.4, 8.2 and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department Exhibits

- D-1 Application and Rights and Responsibilities signed and dated March 1, 2004
- D-2 Rapids case comments dated March 1, 2004 through August 20, 2004
- D-3 Food Stamp Claim Determination form showing loss to Food Stamp Program of \$688 for the period of March 2004 through June 2004
- D-4 Notification of Intent to Disqualify dated June 25, 2004
- D-5 WV Income Maintenance Manual Sections 1.2, 1.4, 8.2 & 20.2 & Common Chapters Manual, Appendix A
- D-6 WV EBT Production System computer print-outs

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) A request for an Administrative Disqualification Hearing was received by the Board of Review from State Repayment Investigator Teresa Smith. Ms. Smith contends that the Defendant has committed an Intentional Program Violation and is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of 12 months.
- (2) Notification of the November 9, 2004 hearing was sent to the Defendant via first-class mail on September 20, 2004.
- (3) The Defendant contacted Ms. Smith on the morning of the hearing to request that the date be rescheduled as she was scheduled to appear in court in Ohio that day. Ms. Smith objected to the request after contacting the court system in St. Clairsville, Ohio and learned that the Defendant was notified of the court appointment on October 26, 2004. Ms. Smith contended the Defendant would have had the opportunity to request rescheduling of the Administrative Disqualification Hearing at least 10-days prior to the day of the hearing since she was aware of the scheduling conflict well in advance.
- (4) The objection was sustained in accordance with Federal Regulations [7 CFR 273.16 (e) (4)], and State Policy (700 of Common Chapters Manual Appendix A, C, 5) - The household member or representative may request one postponement of the hearing providing the request is made at least 10 days in advance of the date of the scheduled hearing. The hearing was conducted without the Defendant in attendance.
- (5) The Defendant completed a redetermination for the Food Stamp Program on March 1, 2004 (D-1), reporting that she and her daughter resided with her mother on Burnt Mill Road, Wheeling, WV.
- (6) On May 25, 2004, the Defendant's case worker received an electronic mail message from the fraud investigations supervisor relating information that the Defendant and her daughter were residing in St. Clairsville, Ohio with the Defendant's husband, _____, and that she had lived there for the past four years (D-2). The message, which was based on a complaint from _____, indicated the Defendant was using her mother's address to obtain benefits from West Virginia.
- (7) Notification of Intent to Disqualify dated June 25, 2004 (D-4) was sent to the Defendant.
- (8) Rapids case comments (D-2) indicate the Defendant provided a notarized statement from her mother to DHHR during an office visit on June 28, 2004. The statement indicated the Defendant and her child had resided with her mother since February 2004.
- (9) The Department submitted exhibit D-6, WV EBT print-out, to show that Food Stamp benefits have been used to purchase food in Bellaire and St. Clairsville, Ohio grocery stores. These communities, however, are

in close proximity to the Wheeling, WV area.

- (10) Ms. Smith testified that Mr. _____ was sent a letter notifying him of the hearing date as he had indicated he would provide testimony, however, Mr. _____ failed to appear. According to Ms. Smith, Mr. _____ had left a voice mail message after the notification was sent contending that he had never reported any information about his wife and she did not reside with him for the period in question.
- (11) West Virginia Income Maintenance Manual § 1.2 (D-5) states that it is the client's responsibility to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- (12) West Virginia Income Maintenance Manual § 20.2 (D-5):
When an assistance group has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.
- (13) West Virginia Income Maintenance Manual § 20.2(C) (2):
IPVs (Intentional Program Violations) include making false or misleading statements, misrepresentations, the concealment or withholding of facts and committing any act that violates the Food Stamp Act of 1977, Food Stamp Regulations or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.
- (14) West Virginia Income Maintenance Manual § 20.2(C) (2):
Once an IPV (Intentional Program Violation) is established a disqualification penalty is imposed on the AG (assistance group) members who committed the IPV.
The penalties are as follows: (§ 9.1, A, 2, g) 1st Offense: 1 year (Disqualification)
- (15) 7 CFR § 273.16 (e) (6) Code of Federal Regulations:
The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an Intentional Program Violation.

VIII. DECISION:

Policy provides that an Intentional Program Violation (IPV), for purposes of the Food Stamp Program, will include the making of false or misleading statements, misrepresentations or the concealment or withholding of facts in attempting to secure Food Stamp benefits. The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an Intentional Program Violation.

The Department's recommendation to disqualify the Defendant from participation in the Food Stamp Program is based on an alleged report from her husband, _____ . Mr. _____ , however, was not available to testify at the hearing and the Department failed provide clear and convincing evidence to verify that the Defendant resided in Ohio for the period of March 2004 through June 2004. Based on evidence presented during the hearing, I am unconvinced that the Defendant misrepresented her situation in order to secure benefits through the Food Stamp Program.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to disqualify the Defendant from the Food Stamp Program for a period of one (1) year

IX. RIGHT OF APPEAL:

See Attachment

X. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29