



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
November 10, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your Administrative Disqualification Hearing held September 21, 2005.

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. 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 (West Virginia Income Maintenance Manual § 20.2 and Code of Federal Regulations- 7 CFR § 273.16)

The information submitted at the hearing failed to establish in a clear and convincing manner that you committed and intended to commit an Intentional Program Violation.

It is the decision of the State Hearing Officer that an Intentional Program Violation was **not committed** and no disqualification penalty is to be applied regarding the July 2004 thru December 2004 overissuance. The agency's proposal to apply a disqualification is **reversed**.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Board of Review

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Defendant,

v. Action Number 05-BOR- 5616

**West Virginia Department of Health and Human Resources,
Respondent.**

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from an Administrative Disqualification hearing concluded on November 8, 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 September 21, 2005. 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:

Lynn McCourt, Investigator, DHHR
Presiding at the hearing was Ron Anglin, State Hearing Examiner 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 § 1.2, 9.1 f-i, 10.3, 10.4, 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 - Food Stamp Claim Determination, 7/04- 12/04
- D-2 - Earnings verification, 4/5/04- 11/1/04, _____ Co.
- D-3 - Combined Application and Review Form, 7/20/04
- D-4 - Waiver of Admin. Dis. Hearing signed by defendant 9/7/05
- D-5 - Case Comments and FS history

VII. FINDINGS OF FACT:

1) An Administrative Disqualification Hearing requested by Investigator, Mary Ford, May 5, 2005. Notification of September 21, 2005 hearing was mailed to defendant July 28, 2005. Notification was sent by first class mail as investigator indicated there was an active benefit case in the home. The hearing was convened as scheduled. The hearing scheduled for 10:00 am and as of 10:20 am the defendant had failed to appear. As set forth in policy, the hearing was held in defendant's absence.

2) During the hearing Exhibits as noted in Section VI above were submitted.

3) Testimony was heard from the current investigator, Lynn McCourt.

4) Testimony on behalf of the agency reveals an overpayment of benefits 7/04- 12/04. Benefits in 7/04 were based on income of \$774.48 while actual income was \$3222.50 which would have made him ineligible for Food Stamps in July. The claimant also received benefits 8/04- 12/04 based on zero income as claimant indicated that his work was irregular and could not be estimated. The agency requests a 12 month disqualification. A waiver, D- 4, was signed by claimant but was not marked to indicate culpability and it was returned to the defendant. No further response was received.

5) Exhibit D- 3, Combined Application and Review Form, 7/20/04 was completed and signed by defendant. Statement # 42 under Rights and Responsibilities was marked "NO" - indicating that he did not understand. The defendant reported only himself in the household. He reported working for _____.

6) Exhibit D-5, Case Comments from 7/20/04 reveal that the defendant reported a pay 7/8/05 from _____ of \$ 774.48. He indicated that he cannot anticipate future earnings as he is called out the day prior to work. He was told to report income "if it seems to be regular".

7) West Virginia Income Maintenance Manual § 1.2 (E) & (D):

The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.

The Agency's responsibilities include: inform the client of his responsibilities, the process involved in establishing his eligibility...

8) West Virginia Income Maintenance Manual § 10.4, C:

This section contains policy relating income disregards and deductions and computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and number (of persons) in the benefit group.

9) West Virginia Income Maintenance Manual § 20.2:

When an AG 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 of the AG and the coupon allotment the AG was entitled to receive.

9) 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) member(s) who committed the IPV.

10) West Virginia Income Maintenance Manual § 20.2 (C) (2):

IPV's (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.

11) 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. CONCLUSIONS OF LAW:

1) Policy directs that the applicant has a responsibility to supply correct and accurate information in order that an accurate determination of benefit eligibility can be made. Evidence reveals that the defendant reported at the 7/20/04 application that he had received a pay from _____ on 7/8 of \$774.48. He reported his pay was irregular. Documentation from _____ confirms these assertions.

2) The agency has a responsibility to properly inform the applicant of his responsibilities and the penalties in failure to comply. Evidence reveals that the defendant was told to report income "if it seems regular". Additionally, he failed to mark statement # 42 in the affirmative at the 7/20/04 application when he signed it. This statement relates to providing complete and truthful information and reporting changes plus repayment and fraud consequences. Evidence suggests some deficiency on the agency's part in enlightening the defendant of his responsibilities, consequences thereof and proper reporting of changes.

3) When an individual has been issued more Food Stamps than he 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 individual received and the coupon allotment he was entitled to receive. Evidence clearly reveals that an overissuance of \$766 occurred based on income received by the defendant during the period July 2004 thru December 2004.

4) Intentional Violations include making false or misleading statements, misrepresentations, concealing or withholding of facts or committing any act that violates the Food Stamp Act of 1977. Evidence fails to support a finding that any of the above apply to the overpayment made to the defendant.

5) 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. Evidence fails to meet the clear and convincing standard set forth in the regulations. There is question as to the defendant's understanding of his responsibilities and the clarity of the agency's instructions thereof.

IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, evidence was found to be unconvincing that the defendant committed an Intentional Program Violation (IPV). Therefore, no **disqualification penalty is to be applied** regarding the July 2004 thru December 2005 overissuance. The Agency's proposal to applied a disqualification is **reversed**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED This 10th Day of November, 2005

RON ANGLIN
State Hearing Examiner