



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 6, 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)

Information submitted at the hearing revealed that you provided misleading information about your household composition. By intentionally providing false or misleading information about your household composition, you received \$596 in Food Stamp benefits to which you were not eligible.

It is the decision of the State Hearing Officer that you committed an Intentional Program Violation and a disqualification penalty of one (1) year will be applied. This disqualification will begin March 1, 2005.

Sincerely,

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

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

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 6, 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, 9.1 and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department Exhibits

- D-1 Application and Rights and Responsibilities signed and dated January 2, 2004
- D-2 Rapids case comments dated January 1, 2004 through July 8, 2004
- D-3 Food Stamp Claim Determination form showing loss to Food Stamp Program of \$596 for the period of January 2, 2004 through June 2004
- D-4 Notification of Intent to Disqualify dated June 15, 2004
- D-5 WV Income Maintenance Manual Sections 1.2, 1.4, 9.1 and 20.2 and Common Chapters Manual, Appendix A

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 hearing convened as scheduled and the Defendant failed to appear. As set forth in regulations [7 CFR 273.16 (e) (4)], and State Policy (700 of Common Chapters Manual Appendix A Part F), the hearing was conducted without the Defendant in attendance.
- (4) The Defendant completed a redetermination for the Food Stamp Program on January 2, 2004 (DHS-1), reporting herself, her spouse and two children in the household.
- (5) On June 3, 2004, Child Protective Services Worker Henry Gauge reported that the Defendant was at Hillcrest and that the Defendant's son _____ had been residing with his father, _____, since September 2003. This information was obtained via an interview with the Defendant. The Department contends that _____ was not a member of the household at the time of the January 2004 redetermination and should not have been included in the Food Stamp benefits.
- (6) The Defendant and _____ were at DHHR on June 25, 2004, at which time _____ stated he does stay with his father at times (DHS-2). The Agency worker requested verification, asking that a written statement be provided from _____ regarding _____ living arrangement from January through June 2004. The Defendant failed to provide this verification and the Food Stamp case was closed.
- (7) Exhibit D-1 reveals the Defendant's signature certifying that the information is true and correct. This exhibit indicates it was reported that _____ was residing in the household.
- (8) Notification of the Department's intent to disqualify the Defendant from participation in the Food Stamp Program was sent to the Defendant on June 15, 2004 (DHS-4). The Defendant failed to respond.
- (9) The Department submitted exhibit DHS-3, Food Stamp Claim Determination completed for the period January 2, 2004 through June 30, 2004, which reveals that the Defendant received \$596 in Food Stamp benefits for which she was not entitled due to misrepresenting the household composition.
- (10) West Virginia Income Maintenance Manual § 1.2 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.
- (11) West Virginia Income Maintenance Manual § 9.1 M:

This section contains policy relating who must or must not be included in the Food Stamp benefit group.

- (12) West Virginia Income Maintenance Manual § 20.2:
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 evidence indicates that the Defendant intentionally misrepresented her household situation when she reported that her son was residing in her home during the January 2004 Food Stamp redetermination. This finding is based on the Defendant's June 2003 admission that her son had been living with his father since September 2003 and that she failed to present any verification to the contrary. By intentionally providing misleading information, the Defendant received an over issuance of Food Stamp benefits in the amount of \$596. Providing false or misleading statements to secure Food Stamp benefits constitutes a clear violation of the regulations. Based on evidence presented, I find the violation intentional.

The Agency's request for a one (1)- year disqualification is **upheld**. This disqualification will begin March 1, 2005. Only the Defendant is subject to this disqualification.

IX. RIGHT OF APPEAL:

See Attachment

X. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

