



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

September 12, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 11, 2007. 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 intentionally withheld reporting your household's earned and unearned income on several occasions, and in a timely manner. This resulted in an over issuance of Food Stamp Benefits in the amount of \$1,159.00 for the period covering April 2006 through May 2006; and January 2007 through July 2007.

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 twelve (12) months. The sanction will be effective October 2007.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Mrs. Jennifer Butcher, Repayment Investigator

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

_____,

Defendant,

v.

Action Number: 07-BOR-1861

**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 September 12, 2007 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 scheduled for September 11, 2007 on a timely appeal filed August 7, 2007. The Scheduling Notice, Request for an Administrative Disqualification Hearing, and Waiver of Administrative Disqualification Hearing forms were mailed to the Defendant via First Class Mail on August 7, 2007.

The issue in this particular matter involves the Defendant intentionally withholding facts about his household's earned income, and intentionally failing to report in a timely manner. This allegedly resulted in an over issuance of Food Stamp Benefits in the amount of \$1,159.00. The Department is seeking a ruling of Intentional Program Violation; Disqualification from the Food Stamp Program for a period of one (1) year; and Repayment of the over issued Food Stamp Benefits.

It should be noted here that, the Defendant was receiving Food Stamp Benefits at the time of the hearing. The Scheduling Notice was not returned, and the Defendant did not attend the scheduled hearing.

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:

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 Sections 1.2 E Client Responsibility; 2.2 B (1) (a) Simplified Reporting AG's; and Common Chapters Manual, Chapter 700, Appendix A, Section B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

Exhibit -1 Food Stamp Application with Rights and Responsibilities dated 12/08/05
Exhibit -2 Food Stamp Approval Letter dated 12/09/05
Exhibit -3 Case Comments dated 03/03/06 Reporting change in UCI
Exhibit -4 Change Letter dated 03/06/06 re: Decrease in Food Stamps
Exhibit -5 Food Stamp Application with Rights and Responsibilities dated 11/09/06
Exhibit -6 Food Stamp Review dated 04/02/07
Exhibit -7 Referral from FEFU dated 04/05/07
Exhibit -8 Income Verification dated 07/02/07
Exhibit -9 Referral from FEFU dated 04/05/07
Exhibit-10 Case Comments dated 12/08/05; 03/03/06; 03/14/06; 11/09/06; 01/22/07; 03/28/07 & 04/02/07
Exhibit-11 Food Stamp Calculation Sheets
Exhibit-12 WVIMM 1.2E
Exhibit-13 WVIMM 2.2B

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The West Virginia Department of Health and Human Resources requested this hearing for the purpose of determining if the Defendant committed an Intentional Program Violation (IPV). The Code of Federal Regulations 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 the Food Stamp EBT card or ATP's.
- 2) The Investigation Fraud Management Unit (IFM) received a referral from the Front End Fraud Unit (FEFU) stating the Defendant failed to report at application that he was working, and receiving monthly UCI low earnings. Because of this unreported income an over issuance of Food Stamps occurred for the periods of April 2006 through May 2006; and January 2007 through July 2007 in the amount of \$1,159.00.
- 3) A Food Stamp Application dated December 8, 2005 and the Rights and Responsibilities (R & R) were signed by both the Defendant and his live-in companion, agreeing to abide by the policy to report all income at applications and reviews (Exhibit -1).
- 4) A Food Stamp Approval letter dated December 9, 2005 was issued that explained (1) the amount of Food Stamps the two member household would receive (\$147.00 per month); (2) Who in the benefit group is an Able Bodied Adult Without Dependents (ABAWD) – Defendant and live-in companion; and (3) what to do if total family income increases to more than \$1,390.00 per month. The reported income used to calculate the Food Stamps was unearned income in the amount of \$872.90 (Exhibit -2).
- 5) Case Comments dated March 3, 2006 indicates the Defendant called to report his Unemployment Benefits (UCI) had decreased from \$203.00 to \$119.00 per week. The change was entered by the Case Worker effective April 2006 (Exhibit -3).
- 6) A change in benefits letter dated March 6, 2006 was sent to the Defendant. It stated in part, "The Food Stamps were being decreased due to a change in the household." The Defendant's live-in companion was an ABAWD person in this benefit group, and since she was not working she would continue to be counted as a liable debtor in the household. On page 2 of the letter, it is clearly stated in paragraph three the client must contact the office if total income increases to more than \$1037.00 per month, which is the Federal Poverty Level for a one person household. The letter goes on to explain GROSS income, the amount of all earned and unearned income before taxes or other withholding are taken out. The only reported income used was unearned income in the amount of \$511.70 (Exhibit -4).
- 7) A Food Stamp Application dated November 9, 2006 with the Rights and Responsibilities were signed by both the Defendant and live-in companion, agreeing that all statements were true and correct and they understood to report changes in their case if the total amount of income exceeded the 130% FPL of \$1,062.00 per month (Exhibit -5).

- 8) A Food Stamp Review was completed on dated April 2, 2007 with the R &R signed by both the Defendant and live-in companion agreeing that all statements were true and correct and they understood to report all income if the total amount exceeded the 130 % FPL (Exhibit 6).
- 9) IFM received a referral from the Front End Fraud Unit (FEFU) dated April 5, 2007 stating, "Customer failed to report correct earned income during the period of 04/01/06 thru 05/31/06" (Exhibit -7).
- 10) Income verification was requested from the Defendant's employer. The Repayment Investigator received the information on July 9, 2007 (Exhibit -8). According to the information, the Defendant had been employed since May 15, 2002. The Wage History indicates the Defendant was working in the month of December 2005 when they applied for benefits.
- 11) In January 2006, the Defendant earned \$732.25 plus his monthly UCI low earnings of \$872.90 as reported in Findings of Fact #3. The total January 2006 income totaled \$1605.15. This amount put the household over the 130 % FPL of \$1,309.00. The total earned and unearned income should have been reported by the 10th day of the following month. This would have resulted in a change effective March 2007, and closed the Food Stamp case effective April 2007. The Defendant and his live-in companion received Food Stamps for April and May 2006 in which they were not entitled.
- 12) IFM received a referral from the Front End Fraud Unit (FEFU) dated April 5, 2007 (Exhibit -9) stating, "Customer failed to report correct earned income during the period of 01/01/07 thru 01/31/07." The Defendant and his live-in companion again failed to report earnings when the total income exceeded the 130% FPL for a 1 person benefit group of \$1062.00. At this time, the Defendant's live-in companion was in ABAWD status and not eligible to be included in the benefit group for Food Stamps.
- 13) The Defendant and his live-in companion came to the office on November 6, 2006 and reapplied for Food Stamps. They again failed to report the earned income. According to Finding of Facts #10, there were earnings in the month of October, November and December 2006. In December 2006 total earnings were \$1,755.00 plus \$653.60 UCI earnings making the total \$2,408.60, which is over the 130% FPL of \$1062.00. If the Defendant had reported the total monthly income, this case would have closed effective January 2007.
- 14) The Case Comments dated 12/14/05; 03/03/06; 03/14/06; 11/09/06; 11/20/06; 01/22/07; 03/28/07; and 04/02/07 indicate the Defendant had contact with the Department at which time he had the opportunity to report he was working, but failed to do so (Exhibit -10).
- 15) Food Stamp Calculation Sheets were completed for the four referrals that included: April and May 2006; January 2007; February, March and April 2007; and May, June and July 2007. The calculation sheets show the income used to issue the Food Stamps for the months in question, and the corrected amount of income that should have been counted to calculate the correct amount of Food Stamps. This was in addition to the Defendant's low earnings income.

- 16) According to policy at WV Income Maintenance Manual Section 1.2 E (Exhibit -12) states in part, "The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility."
- 17) According to policy at WV Income Maintenance Manual Section 2.2 B (1) (a) (Exhibit -13) Simplified Reporting AG's, it states in part, "All AG's subject to the 130% FPL income reporting requirements are certified for 6 months and must report when the total gross earned and unearned income of the AG and all other individuals who reside with the AG exceeds the AG's gross income limit. This must be reported no later than the 10th calendar day of the month following the month in which the change occurs. In addition, an ABAWD in an ILC must report when his work hours are reduced to less than 20 hours per week, averaged monthly."
- 18) The Code of Federal Regulations defines an Intentional Program Violation (IPV) in 7 CFR 273.16 as "... 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 for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system(access device).

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 Defendant intentionally withheld reporting the total monthly earned income on several occasions and in a timely manner. This resulted in an over issuance of Food Stamp Benefits in the amount of \$1,159.00 for the period covering April 2006 through May 2006; and January 2007 through July 2007.

IX. DECISION:

It is the decision of this State Hearing Officer that the Defendant committed an Intentional Program Violation. He will be sanctioned from the Food Stamp Program for a period of 12 months effective October 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of September 2007.

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