



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 3, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held November 28, 2007 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred.

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.

Eligibility for the Food Stamp program is based on current policy and regulations. Some of these regulations state as follows: 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 fails to demonstrate that you intentionally made a false or misleading statement about your household income in order to receive Food Stamp benefits for which you were not entitled.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to apply a one (1) year Food Stamp disqualification penalty against you based on an Intentional Program Violation.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Teresa Smith, SRI, DHHR

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

_____,

Defendant,

v.

Action Number: 07-BOR-2117

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

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing concluded on December 3, 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 hearing was convened on November 28, 2007.

It should be noted here that the Defendant is a current recipient of benefits through the Department.

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:

Teresa Smith, State Repayment Investigator, DHHR

_____, Defendant

_____, Defendant's wife

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

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Defendant committed an intentional program violation 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, 1.4, 9.1, 10.3, 10.4 & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 Combined Application and Review Form (CAF) and Rights and Responsibilities completed on 12/18/06
- DHS-2 Case Comments from RAPIDS – dated 12/18/06
- DHS-3 Rental income – Rent receipt dated 1/25/07
- DHS-4 Food Stamp Claim Determination (ES-FS-5) for period 12/18/07 – March 31, 2007
- DHS-5 IG-BR-44a, Notification of Intent to Disqualify dated 8/14/07
- DHS-6 IG-BR-44, Waiver of Administrative Disqualification Hearing
- DHS-7 West Virginia Income Maintenance Manual Chapter 1.2, 1.4, 9.1, 10.3, 20.2

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from Department of Health and Human Resources' (Department) State Repayment Investigator, Teresa Smith on September 14, 2007. The Department 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 one (1) year.
- 2) On or about August 14, 2007, the Defendant was notified via a Notification of Intent to Disqualify (Exhibit DHS-5), that the Department had reason to believe he intentionally violated the Food Stamp Program by failing to report rental income at the time of his December 18, 2006 application.

- 3) The Department submitted Exhibits DHS-1, the Combined Application and Review Form (CAF) and a Rights and Responsibilities (DFA-RR-1) form(s) signed by the Defendant on December 18, 2006. The Department cited page 11 & 12 to show that the Defendant failed to report unearned (Rental) income.

Exhibit DHS-2, Case Comments from RAPIDS, further notes that the Defendant reported he was laid off, his wife is needed in the home to take care of a disabled child and that there is no income in the home.

- 4) Exhibit DHS-3 was cited by the Department as verification that the Defendant was receiving unreported rental income. This hand-written receipt, dated January 25, 2007 states as follows:

_____ and _____ pay rent and utilities at my rental house. \$375 includes rent and utilities.

- 5) The Department submitted Exhibit DHS-4, Food Stamp Claim Determination, and allege that the Defendant received \$250 in Food Stamp benefits during the period December 2006 through March 2007 for which he was not legally entitled.
- 6) The Department referred to the Rights and Responsibilities form (included in Exhibit DHS-1) that was completed and signed by the Defendant on the day of application (December 18, 2006). The Defendant marked "yes" to item #4 which states:

I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not received Food Stamp benefits as follows: First Offense – one year; Second Offense – two years; Third Offense- permanently. In addition, I will have to repay any benefits received for which I was not eligible.

By signing the DFA-RR-1, the Defendant certified that he read, understood, and accepted the rights and responsibilities and that all of the information he provided was true and correct.

- 7) The Defendant contends that he did not receive any rental income. He stated that he has a rental home behind his residence that has not been rented for several years. According to the Defendant, _____ was living in the house behind him and his wife with his oldest daughter rent free. When his oldest daughter elected to move back into his house (in November or December 2007), and _____ moved in with _____ in early January 2007, it was agreed that _____ would have to pay rent. _____ and _____ lost their jobs and asked for the rent receipt so that they could apply for Food Stamp benefits. While this receipt was written by the Defendant's wife toward the beginning of the month (although dated 1/25/07), both the Defendant and his wife testified that they never received any money and _____ and _____ were evicted at the end of January.
- 8) West Virginia Income Maintenance Manual ' 10.4:
This section contains policy relating income disregards and deductions and to computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and the number in the benefit group.

- 9) West Virginia Income Maintenance Manual § 10.3 confirms that unearned “Rental” income must be considered when determining Food Stamp eligibility and benefit amount.
- 10) West Virginia Income Maintenance Manual ' 1.2 (E) states that it is the client's responsibility is 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 ' 20.2:
When a AG (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.
- 12) 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, h) 1st Offense: 1 year (Disqualification)
- 13) Common Chapters Manual 700, Appendix A, Section B, provides that an Intentional Program Violation 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 benefits.
- 14) Common Chapters Manual 700, Appendix A, Section G, states that the State Hearing Officer 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 as defined in Section B of this Appendix.

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern the Food Stamp program state that a Food Stamp Program Violation has occurred when an individual intentionally makes a false or misleading statement, or misrepresented, concealed or withheld facts relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp benefits.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 3) While the Defendant was unclear of exactly when his daughter moved back into his home (November or December 2006), and testimony indicates that a monetary rental agreement was not arranged until January 2007, by which no rental income was reportedly received, there is insufficient evidence to indicate the Defendant was receiving rental income at the time of his December 18, 2007 application. The evidence submitted in this case fails to meet the clear and convincing evidentiary requirement and therefore fails to demonstrate intent.

- 4) Based on the evidence, a Food Stamp disqualification cannot be applied to the Defendant's case.

IX. DECISION:

The Agency's proposal to apply a one (1) years Food Stamp disqualification is **reversed**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd Day of December, 2007.

**Thomas E. Arnett
State Hearing Officer**