



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

November 29, 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 26, 2007 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred.

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 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 revealed that you intentionally provided false and misleading information about your household composition and income in order to receive Food Stamp benefits for which you were not entitled by law.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. This disqualification will begin effective January 2008.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Sally Musick, SRI, DHHR

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

_____,

Defendant,

v.

Action Number: 07-BOR-2288

**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 November 29, 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 26, 2007.

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:

Sally Musick, State Repayment Investigator, DHHR

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 (IPV) and should be disqualified for a specified period from participation in the Food Stamp Program.

V. APPLICABLE POLICY:

7 CFR ' 273.16 Code of Federal Regulations
Common Chapters Manual Chapter 700, Appendix A
West Virginia Income Maintenance Manual ' 1.2, 2.2, 9.1, 10.4 & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1 ES/FS-5, Food Stamp Claim Determination for June, July & August 2007
DHS-2 Certificate of Marriage – (Married on March 10, 2007)
DHS-3 Combined Application and Review Form (CAF) dated 5/31/07
DHS-4 Case Comments dated 8/29/07
DHS-5 Earned income verification for _____ dated 8/10/07
DHS-6 Unearned income verification for _____ (Child Support)
DHS-7 West Virginia Income Maintenance Manual Chapter 9.1
DHS-8 DFA-RR-1 (Rights and Responsibilities) dated 5/31/07
DHS-9 West Virginia Income Maintenance Manual Chapter 1.2E and 2.2
DHS-10 West Virginia Income Maintenance Manual Chapter 9.1A.2.h and 20.2

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from State Repayment Investigator, Sally Musick, on October 16, 2007. Ms. Musick 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) Notification of the November 26, 2007 hearing was mailed to the Defendant on October 24, 2007 via Certified, Restricted Delivery, Mail. The Defendant's signature appears on the return receipt and indicates the Notice of Hearing was received on October 26, 2007.
- 3) The hearing convened as scheduled at 1:15 p.m., and as of 1:30 p.m., the Defendant failed to appear. As set forth in regulations [7 CFR 273.16 (e) (4)], and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 700, Appendix A Part F), the hearing was conducted without the Defendant in attendance.

- 4) The Defendant completed an application for Food Stamp benefits on May 31, 2007. The Department submitted Exhibit DHS-3, Combined Application and Review Form (CAF) signed by the Defendant on May 31, 2007, to show the Defendant reported that his household consisted of one (1) individual with zero (\$0) income.
- 5) Department's Exhibit DHS-5, DFA-RR-1, is the Rights and Responsibilities form completed and signed by the Defendant on the day of application (May 31, 2007). The Defendant marked "yes" to item #4 on page 2 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.

- 6) The Department received notice that the Defendant was moving from the home he was residing in and that he was married on March 10, 2007 (See Exhibit DHS-2, Certificate of Marriage). Exhibit DHS-4 further explains that the address provided to the Department by the Defendant is the address that he shared with his wife and her two children.
- 7) According to Exhibit DHS-7 (WVIMM Chapter 9.1), individuals who live together, spouses and children under the age of 22, must be included in the same assistance group (AG).
- 8) Exhibits DHS-5 and DHS-6 verify that _____'s monthly income was \$2626.17. According to the Department, the maximum allowable monthly income amount for an assistance group (AG) of four (4) was \$2167. Based on this evidence, the Defendant was not entitled to any Food Stamp benefits.
- 9) The Food Stamp Claim Determination (Exhibit DHS-1) reveals that the Defendant received \$465 in Food Stamp benefits during the period June 2007 through August 2007 to which he was not entitled.
- 10) 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 {emphasis added}.
- 11) West Virginia Income Maintenance Manual ' 1.2 (E):
The client's responsibility is 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:
When a 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 the client received and the allotment he should have received.
- 13) 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)
- 14) Common Chapters Manual 700, Appendix A, 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.

VIII. CONCLUSIONS OF LAW:

- 1) The evidence reveals that on May 31, 2007, the Defendant provided false and misleading information about his household composition in order to receive Food Stamp benefits to which he was not entitled. This clearly establishes intent.
- 2) 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.
- 3) There is clear and convincing evidence that the Defendant committed an intentional program violation as defined in the Food Stamp policy and regulations.
- 4) In accordance with Food Stamp policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first time offense is twelve months (one year).
- 5) Only the Defendant is subject to this disqualification. The 1-year disqualification will begin effective January 1, 2008.

IX. DECISION:

Intentionally providing false or misleading statements or misrepresenting facts to secure food Stamp benefits constitutes a clear violation of the regulations. Based on evidence presented, I find the violation intentional.

The Agency=s proposal to apply a Food Stamp disqualification is **upheld**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of November, 2007.

**Thomas E. Arnett
State Hearing Officer**