



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
PO Box 29
Grafton WV 26354
March 21, 2007

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 February 21, 2007.

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 established that you committed an Intentional Program Violation by failing to report all household income received during the period August 2006 through October 2006 resulting in an overissuance of benefits.

It is the decision of the State Hearing Examiner that an Intentional Program Violation was committed and a 1 year disqualification penalty is to be applied. This disqualification will begin May 1, 2007 and applies only to the defendants.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Board of Review

_____,
Defendant,

v.

Action Number 06-BOR- 3260

**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 March 21, 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 February 21, 2007.

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:

_____, defendant

_____, defendant

Sally Musick, Investigator, WVDHHR

Brenda Davis, Economic Services Worker

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, 10.3, 10.4, 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Agency's Exhibits:

- D-1 - Food Stamp Claim Determination, 8/06- 10/06
 - D-2 - Combined Application and Review Form, 7/7/06
 - D-3 - WV State Online Query, 10/6/06
 - D-4 - WVIMM 1.2, 2.2, 9.1, 20.1, 20.2
 - D-5 - Rights and Responsibilities, signed 7/7/06
 - D-6 - Case Comments, 10/05- 2/07
- Defendant's Exhibits
- DF- Income/Asset Check Off Sheet, 7/7/06

VII. FINDINGS OF FACT:

1) An Administrative Disqualification Hearing requested by the DHHR Investigator, November 6, 2006. Notification of a February 21, 2007 hearing was mailed to the defendant January 16, 2007. Notification was sent by first class mail as the agency's investigator indicated there was an active benefit case in the home. The hearing was convened with the defendant present.

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

3) Testimony was heard from the individuals listed in Section III above who was placed under oath.

4) Testimony on behalf of the agency reveals that the defendant's household received \$729 Food Stamp benefits during the period 8/1/06- 10/31/06 to which they were not entitled. A case review was completed 7/7/06 and the defendant failed to report that a son had begun receiving SSI benefits. The income reported at this review was the earnings of the mother and SSI of the father. Verification reveals that the child had received SSI benefits since 3/06. Based on the simplified reporting system this income didn't need to be reported until the next scheduled review- 7/06. Case comments fail to reveal that child's income was reported. The agency recommends a 12 month disqualification.

5) The defendants testified that when they completed the 7/7/06 review they filled out another form listing all people in the home and income. When they noted SSI on DF-1 they meant the father's and son's SSI. They allege that they were told about child's SSI payment and back payment in 12/06 by a West Virginia Worker who called SSA. They got this back payment 1/24/06 and child's SSI benefit in 2/06. Allege that they told worker at 7/7/06 review of SSI of child.

6) Exhibit D-2, and D-5, Combined Application and Review Forms and Rights and Responsibilities of 7/7/06 were completed and signed by the defendant. The consequences in failing to report accurate information were acknowledged. No SSI income was reported for any of the non-adult members of the household

7) Exhibit D-3 reveals the defendant's oldest son began receiving SSI benefits 3/1/06.

8) Exhibit D-6 - Case Comments, 10/14/05- 10/2/06 provides no mention, notation or reporting of SSI receipt by the child in question. This includes the 10/26/05 West Virginia Works application recording.

9) 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...

10) 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.

11) 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.

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) member(s) who committed the IPV.

13) 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.

14) 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) The agency has a responsibility to properly inform the applicant of his responsibilities and the penalties in failure to comply. Documents presented contain directives relating to recipient responsibilities and penalties. At the time of the July 7, 2006 case review, the defendants acknowledged the accuracy of information provided and the penalties for noncompliance by their signatures.

2) When an individual has been issued more Food Stamps than she/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 reveals that an overissuance of Food Stamp benefits occurred during the period August 2006 through October 2006 based on SSI benefits received by a member of the household but not considered in the computation of benefits.

3) 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 failed to report total household income at the time of the July 7, 2006 case review. The defendant's explanations were unconvincing. The form alleged by the defendants, which allegedly reported this income, was not found or produced. The West Virginia Works recording contains no mention of a call to Social Security or any mention of SSI for the child. The review form signed July 7, 2006 failed to reflect this income and it is the responsibility of the applicant to ensure the information is true and completed and the individual's signature is testament to that fact.

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 reveals that the defendants failed to report total household income as required by policy and specifically when provided an opportunity during at the July 7, 2006 case review. This action constitutes a withholding or concealment of facts which resulted in an overissuance of benefits- clearly a violation of the act.

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 supports a finding that the defendants' concealment/withholding of information was clearly intentional. Evidence submitted provides no other reasonable explanation. The agency provided evidence of a signed, false statement made by the defendant - the July 7, 2006 case review. The defendant at that time acknowledged responsibilities and the resulting penalties for failure to provide accurate information.

IX. DECISION:

Based on evidence presented, I find that the defendants intentionally withheld information essential in determining Food Stamp benefit level. The making of false statements or the withholding or concealment of information to secure benefits constitutes a clear violation of the regulations. Based on evidence presented, the defendant's intent was clear and the violation intentional.

The Agency's request for a one (1) year disqualification is upheld.

Only the defendants are subject to this disqualification.
This disqualification will begin May 1, 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED This 21st Day of March, 2007

RON ANGLIN
State Hearing Examiner

**For
Public Assistance Hearings,
Administrative Disqualification Hearings, and
Child Support Enforcement Hearings**

A. CIRCUIT COURT

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of Health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATE DEPARTMENT OF AGRICULTURE

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.

IG-BR-46 (Revised 12/05)



**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HEARING DECISION TRANSMITTAL FORM**

DATE: December 4, 2007
TO: Sally Musick, Investigator
FROM: Ron Anglin, State Hearing Examiner
RE: NAME: _____
COUNTY: Barbour
CATEGORY: Food Stamp -ADH/IPV

ATTACHED IS THE DECISION AND SUMMARY ON THE ABOVE-NAMED CASE:

In favor of the agency **(UPHELD)**

**PLEASE COMPLETE THE BOTTOM OF THIS FORM AND RETURN
ONE COPY TO THE STATE HEARING OFFICER**

- Date Hearing decision implemented _____
- Effective Date _____
- Amount of Retroactive Payment _____
- Case Continued No Action Necessary _____
- No Action Necessary _____
- Action Not Taken (Give Reason) _____

Date _____ Signature _____
(Agency Employee)