



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

January 24, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 23, 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 tall household income at the time of application. This resulted in an over issuance of Food Stamp Benefits in the amount of \$350.00 for the period covering February 16, 2006 through August 2006.

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 March 2007.

Sincerely,

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

cc: State Board of Review
Mrs. Debbie Roberts, Repayment Investigator

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

_____,
Defendant,

v.

Action Number: 06-BOR-3387

**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 January 24, 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 January 23, 2007 on a timely appeal filed December 7, 2006. 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 December 7, 2006.

The issue in this particular matter involves the Defendant, _____, intentionally withholding facts about his total household income on the date of application. This allegedly resulted in an over issuance of Food Stamp Benefits in the amount of \$350.00. 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 not receiving Food Stamp benefits at the time of the hearing. He was only receiving Medicaid benefits. A pre-hearing conference was not held between the parties, and the Defendant did not have legal counsel.

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:

Debbie Roberts, 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 Timely Reporting; 20.6 Welfare Misrepresentation; 20.2 Food Stamp Claims and Repayment Procedures; Common Chapters Manual, Chapter 700, Appendix A, Section B; and 7 CFR 273.16 Intentional Program Violation (IPV)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1	Benefit Recovery Referral dated 08/15/06
DHS-2	WVIMM Section 1.2 E Client Responsibility
DHS-3	Food Stamp Claim Determination
DHS-4	7CFR273.16
DHS-5	Case Comments dated 02/14/06
DHS-6	Application dated 02/14/06
DHS-7	Rights and Responsibilities dated 02/14/06
DHS-8	Case Comments dated 02/16/06
DHS-9	Provider Payment History Report
DHS-10	WVIMM Section 2.2 B Reporting Requirements
DHS-11	Application and Case Comments dated 08/03/06
DHS-12	Case Comments dated 08/08/06
DHS-13	WVIMM Section 20.6 A Definition of Welfare Fraud
DHS-14	Notification of Intent to Disqualify dated 10/30/06
DHS-15	WVIMM Section 20.2 Food Stamp Claims and Repayment Procedures

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1.** The Investigation and Fraud Management Unit received a referral that the Defendant failed to report day care income (DHS-1).
- 2.** West Virginia Income Maintenance Manual Chapter 1.2 E states in part (DHS-2):

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. When the client is not able to provide the required verification, the Worker must assist him. The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions: (1) Denial of the application; (2) Closure of the active AG; (3) Removal of the individual from the AG; Repayment of benefit; and Reduction in benefits
- 3.** By intentionally failing to report the correct household income, Food Stamps were over issued for the period covering February 16, 2006 through August 2006 in the amount of \$350.00 (DHS-3).
- 4.** Because of the nature of the claim, it has been pursued as an Intentional Program Violation (IPV). The Code of Federal Regulations, Sec. 273.16(c) states, "An IPV consists 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 or ATPs." (DHS-4).
- 5.** The Case Comments dated February 14, 2006 states the Defendant was in the office to apply for Food Stamps for a 3 person household. The Defendant reported unearned income from SSA; earned income from wife's self-employment; one vehicle; no liquid assets; and pays mortgage and utilities. The Application was printed and signed, including the Rights and Responsibilities, indicating all was complete and truthful (DHS-5, 6 & 7).
- 6.** The Case Comments dated February 16, 2006 states the Defendant provided a letter verifying his wife's self-employment income. The verification statement indicates the Defendant wife's income was \$500.00 for January 14, 2006 through February 14, 2006 (DHS-8).
- 7.** The verification from the Department of Health and Human Resources indicates the Defendant's wife received the following day care income: January 24, 2006 - \$3330.25, February 16, 2006 - \$2886.25; and February 22, 2006 - \$64.00. The total household income exceeded the 130% Federal Poverty Level (DHS-9).
- 8.** West Virginia Income Maintenance Manual Chapter 2.2 B (DHS-10) states in part:

The reporting requirements for Food Stamp recipients depend on the AG composition and length of certification. These reporting requirements are only for Food Stamp

benefits and do not affect the reporting requirements of any other program of assistance that the AG also receives.

Regardless of the AG's reporting requirements, all changes reported directly by an AG member, the AG's authorized representative and/or authorized EBT cardholder, or from a source that is listed as verified upon receipt below must be acted on, even if the AG is not required to report the information.

- 9.** West Virginia Income Maintenance Manual Chapter 2.2 B (1) (a) Simplified Reporting AG's (DHS-10) 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.

- 10.** West Virginia Income Maintenance Manual Chapter 2.2 B (3) Timely Reporting & Follow-up (DHS-10) states in part:

To determine if a claim must be established or lost benefits restored, a decision must be made as to whether or not a change was reported in a timely manner. When the client does not report in a timely manner and the change could have been made, a claim may be established. Benefits are not restored when the change which would have increased benefits is not reported within the AG's appropriate time limit.

- 11.** The Case Comments dated August 3, 2006 (DHS-11) states the Defendant was in the office to reapply for Food Stamps and possibly QMB Medicaid. He reported a 3 person household; pays mortgage; utilities; receives SSA benefits; wife self-employed as a baby sitter, and claimed no assets. The worker requested verification of income for the past 30 days. The worker also explained that prescriptions could be used to give him more food stamps if a printout was provided. The Application and Rights and Responsibilities were completed and signed.

- 12.** The Case Comments dated August 8, 2006 (DHS-12) states prescription receipts were received, but no verification of wife's income.

- 13.** West Virginia Income Maintenance Manual Chapter 20.6A (DHS-13) states in part:

Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient in obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device.

The important elements constituting an offense under this statute are that any false representation was willfully made or that any other device to obtain assistance was a misrepresentation.

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false. It is an essential element in a misrepresentation charge that the client knew his statement was false.

Likewise, it is not essential that an affirmative representation be made. Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false.

- 14.** The Notification of Intent to Disqualify and Waiver of Administrative Disqualification Hearing forms were mailed via certified mail to the Defendant on October 30, 2006. The Defendant signed the certified mail receipt on November 1, 2006 and did not respond (DHS-14).
- 15.** The Repayment Investigator recommended a ruling of Intentional Program Violation, twelve month Food Stamp sanction, and repayment of the over issued Food Stamp benefits. The recommendation was based on the Defendant's receipt of Food Stamp benefits since 2003, and having signed several applications and rights and responsibilities.
- 16.** The request for sanction and repayment are in compliance with the Code of Federal Regulations (CFR) section 273.16, and West Virginia Income Maintenance Manual Chapter 20.2 which states in part:

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 (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the coupon entitlement of the AG & the coupon allotment the AG was entitled to receive.
- 17.** West Virginia Income Maintenance Manual Chapter 20.2 C (2) states in part (DHS-17):

The individual who is found to have committed an IPV is ineligible to participate in the Program for a specified time, depending on the number of offenses committed.
- 18.** West Virginia Income Maintenance Manual Chapter 20.2 E (3) (a & b) Collection Procedures states in part (DHS-17):

A. Offsetting Lost Benefits – A claim, whether UPV or IPV, must be collected by offsetting when lost benefits are owed to the Assistance Group, but have not yet been restored.

B. Treasury Offset - Claims which have a balance of at least \$25, are delinquent and are not over 10 years old are subject to referral for collection of the claim by offset of the client's federal income tax refund and any federal benefits/payments.
- 19.** 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.

20. The Defendant intentionally withheld reporting his wife's monthly day care income at the time of application.

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 evidence clearly indicates the Defendant intentionally withheld reporting his wife's day care income at the time of application. This resulted in an over issuance of Food Stamp Benefits in the amount of \$350.00 for the period covering February 16, 2006 through August 2006.

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 March 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of January 2007.

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