



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

August 11, 2008

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 30, 2008 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred requiring a repayment of Food Stamps.

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 which was submitted at your hearing revealed that you intentionally withheld information about your residency from the Department.

It is the decision of the State Hearings Officer to **uphold** the proposal of the Department to impose an Intentional Program Violation and a repayment of Food Stamps received for which you were not eligible for.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review  
Danita Bragg, Repayment Investigator

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

\_\_\_\_\_,

**Defendant,**

v.

**Action Number: 08-BOR-1329**

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

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on July 30, 2008 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 fair hearing was convened on July 30, 2008 on a timely appeal, filed April 29, 2008.

**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:**

\_\_\_\_\_, Defendant  
Danita Bragg, Repayment Investigator  
Kathy Jarrell, Economic Service Worker

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Defendant committed an Intentional Program Violation and therefore be responsible for a repayment of Food Stamps.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual § 2.2, 8.2 and 20.2  
Article 273.16(c) of the Federal Register

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- DHS-1 Food Stamp Claim Determination Form
- DHS-2 Food Stamp Allotment Determination Screens (EFAD) from Rapids Computer System
- DHS-3 Food Stamp Issuance History/Disbursement Screen (IQFS) from Rapids Computer System
- DHS-4 Rights and Responsibilities Form and Combined Application Form dated March 5, 2007
- DHS-5 Case Comments (CMCC) from Rapids Computer System from September 2007 – January 2008
- DHS-6 Electronic Benefits Transfer (EBT) Transaction History from July 2007 – January 2008
- DHS-7 West Virginia Income Maintenance Manual § 8.2A-3(a)
- DHS-8 West Virginia Income Maintenance Manual § 2.2B-1(a)
- DHS-9 West Virginia Income Maintenance Manual § 20.2
- DHS-10 Article 273.16(c) of the Federal Register
- DHS-11 Hearing Summary

**Defendant's Exhibits:**

- D-1 Medical Records from [REDACTED] Regional Hospital for October 2007 and Medical Records from GRN for December 2007

**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' State Repayment Investigator, Danita Bragg, on May 2, 2008. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of one (1) year and a repayment of Food Stamps received for which she was not eligible for.
- 2) The Defendant was notified by a Notification of Intent to Disqualify letter dated April 22, 2008 that the Department had reason to believe she intentionally violated the Food Stamp program by failing to report a change of residency and receiving Food Stamps while living in [REDACTED]. The result was an overpayment of \$610 in Food Stamps.

The Defendant had a pre-hearing conference with Ms. Bragg on April 25, 2008 and elected to have an administrative hearing regarding the Department's claim.

- 3) Defendant phoned the [REDACTED] County Department of Health and Human Resources (DHHR) on September 6, 2007 to reschedule a review. Defendant stated she was in [REDACTED] visiting. Another appointment was scheduled for September 18, 2007 which she failed to attend also (D-5).
- 4) The Defendant's Aged/Disabled 24-Month Food Stamp Review form was received by the [REDACTED] County DHHR on January 2, 2008. Defendant spoke with a caseworker, Kathy Jarrell, on January 14, 2008 for her phone interview. Defendant advised Ms. Jarrell that she had been visiting her daughter in [REDACTED] since July 2007 when she could not get the electricity turned back on in her home. Defendant had been back to West Virginia a few times since then, spending Christmas here (D-5).

Ms. Jarrell testified that she checked the Social Security Administration's (SSA) Online Inquiry System (SOLQ) after speaking with Defendant in January 2008 and it listed a [REDACTED] address for Defendant. Defendant's Food Stamp case was closed at that time.

- 5) Ms. Bragg presented into evidence Defendant's Electronic Benefit Transfer (EBT) Transaction History for July 2007- January 2008. Defendant used her EBT card in [REDACTED] from August 2007 – January 2008. The only transactions made in West Virginia were four (4) from August 12-14, 2007 and a transaction on December 26, 2007. Defendant made the rest of her food purchases in [REDACTED] (D-6).
- 6) The Department contends that according to policy, Defendant had ten (10) days to report any changes to her case. Defendant was residing in another state for more than a calendar month and was not eligible to receive Food Stamps in West Virginia. Defendant spoke with two (2) caseworkers and each time denied living in [REDACTED] stating she was only visiting. Defendant has been a Food Stamp recipient since October 2001 was aware of her responsibilities in reporting accurate information.
- 7) Defendant testified that she went to [REDACTED] sometime in August 2007 to stay with her daughter. Her electricity had been disconnected at her home in West Virginia and she had been unable to have it turned back on. She had also been going through some emotional problems at that time. She came back in December to spend the holidays here but went back to [REDACTED] after Christmas. She finally came back to West Virginia in April 2008.

Defendant stated there was a discrepancy with the information regarding her Social Security. She stated she did not start receiving Social Security Disability until October 2007. Her first check was mailed to her mother's address in [REDACTED] WV. Her mother then sent the check to her in [REDACTED] after having it for several weeks. She had her check direct deposited into an account in [REDACTED] after that. Defendant denied getting any other mail from her mother after that initial check.

Defendant was unsure how the SSA would have gotten a [REDACTED] address for her but then contradicted that statement when she stated she went to the SSA office in [REDACTED] to inquire about the status of her Disability claim.

Defendant testified that at one point she talked to someone with the Department and asked for her case to be closed after her Food Stamps were reduced. She couldn't remember who or when that was but thought it was sometime around the time she had her appointment rescheduled in September 2007. Defendant's Food Stamp allotment was reduced in November 2007 after the onset of her Social Security (D-3). Defendant also stated she applied for Food Stamps in Georgia but was never approved.

Defendant claims she never intentionally tried fraud the Department but her Food Stamps were the only source of income she had for a while. She did not know how long she would be in [REDACTED]. She was having mental problems while in [REDACTED] didn't feel like she should be held responsible for her actions.

- 8) West Virginia Income Maintenance Manual § 8.2A-3(a) states:

Temporary visits with the intent to return, do not affect the individual's place of residence, unless he has been or is expected to be absent from the home for a full calendar month.

- 9) West Virginia Income Maintenance Manual § 2.2B-1(a) states in pertinent parts:

All Food Stamp Assistance Group's (AG) in which all adults are at least age 60 and/or disabled with no earnings or only excluded earnings are certified for 24 months. Changes which occur between the interview and approval must be reported within 10 days of the date of the approval notice. Once approved, these AG's must also report the following changes which include, but are not limited to:

- Changes in AG composition
- Changes in residence when the AG moves

- 10) West Virginia Income Maintenance Manual § 20.1 states:

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 and the coupon allotment the AG was entitled to receive.

- 11) Code of Federal Regulations- 7 CFR ' 273.16 states:

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 coupons.

**VIII. CONCLUSIONS OF LAW:**

- 1) In order for an Intentional Program Violation to be established, it must be shown by clear and convincing evidence that the Defendant intentionally made a false statement or withheld or concealed facts from the Department.
- 2) Defendant testified that she did not know how long she would actually be in [REDACTED] and maintains she was only there visiting her daughter until she could get some things straightened out. However, Defendant notified the Social Security Administration of her change of residence and even applied for Food Stamps in Georgia. It is evident that Defendant knew she would be residing in [REDACTED] for some time to make these arrangements.
- 3) Defendant also claimed she had tried to have her Food Stamp case closed in West Virginia. She continued to use her Food Stamps in Georgia after the allegedly requested the case closure. By Defendant's own admission, she continued using the Food Stamps as that was her only income until the Social Security started.
- 4) Defendant was required by policy to report her all changes with ten (10) days and should have reported that she was residing in [REDACTED] after she had been there a full month. Because the Defendant failed to report her change in residency, she was issued Food Stamps for which she was not eligible to receive. Defendant will be responsible to repay the overissuance of Food Stamps she received from September 2007 – January 2008 in the amount of \$610.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's proposal of an Intentional Program Violation, first offense, and a repayment of \$610 in Food Stamps.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 11<sup>th</sup> Day of August, 2008.**

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**Kristi Logan  
State Hearing Officer**