



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 1736  
Romney, WV 26757

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

August 21, 2008

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

Dear Ms. \_\_\_\_\_,

Attached is a copy of the findings of fact and conclusions of law on your Administrative Disqualification hearing held July 29, 2008. Your hearing was based on the Department of Health and Human Resources' claim that you had committed an intentional program violation of the Food Stamp program.

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: For the purpose of determining, through an administrative disqualification hearing, whether or not a person has committed an intentional program violation, the following criteria will be used: 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 regulations, or any statute relating to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamp benefits. (Section B. Appendix A, Chapter 700 of Common Chapters Manual) Individuals found to have committed an intentional program violation shall be ineligible to participate in the Food Stamp Program for a fixed period of time as explained in section 9.1,A,2,g of the WV Income Maintenance Manual and 7 CFR Section 273.16 .

The information submitted at your hearing did not conclude that you committed an intentional program violation by withholding information regarding the Social Security income you received for yourself and your child.

It is the decision of the State Hearings Officer to **reverse** the proposed action of the Department to apply a Food Stamp Sanction to your case for an intentional program violation.

Sincerely,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Karen Crossland, Repayment Investigator

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

\_\_\_\_\_,

**Defendant,**

v.

**Action Number: 08-BOR-1330**

**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 August 20, 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 Administrative Disqualification hearing was convened on July 29, 2008 on a request, filed by the Agency on April 30, 2008.

It should be noted here that any adverse action of the agency has been postponed pending a hearing decision. The Defendant did not appear for the hearing after being properly notified of the hearing date and time. The hearing was held in her absence.

**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 food stamp benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

**III. PARTICIPANTS:**

Karen Crossland, Repayment Investigator

Presiding at the Hearing was Sharon K. Yoho, 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 has committed an act of intentional program violation.

**V. APPLICABLE POLICY:**

Common Chapters Manual, Chapter 700, Appendix A, Section B  
7 Code of Federal Regulations Section 273.16  
West Virginia Maintenance Manual Section §1.2, 1.4, 9.1; and 20.2

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

**Department's Exhibits:**

- D-1 Food Stamp Claim Determination
- D-2 Application & Rights and Responsibilities signed by defendant October 2, 2007
- D-3 Verification of Social Security income
- D-4 WV Income Maintenance Policy 1.2
- D-5 WV Income Maintenance Policy 2.2
- D-6 WV Income Maintenance Policy 9.1
- D-7 WV Income Maintenance Policy 20.1

**VII. FINDINGS OF FACT:**

- 1) The Defendant was in the Hardy County DHHR office on October 2, 2007 to complete and application for Food Stamps. During this application process, the Defendant read and acknowledged that she understood her rights and responsibilities to report accurate information and the possible result of not doing so. She was advised that if she were found to have committed an act of intentional program violation, she would not receive Food Stamp benefits as follows: First Offense – one year; Second Offense – two years; Third Offense – permanently. She also was advised that she would have to repay any benefits received for which she was not eligible.
- 2) At this October application, the income she reported for the household was her husband's Social Security income of \$1118.50 and child support direct payment income of \$300. received for her son. The Department calculated the Food Stamps based only on the reported Social Security income. The \$300. child support direct payment was not counted.

- 3) In December 2007, the caseworker received a computerized alert from the Social Security office that reported Social Security income for both the Defendant and her child received in October, November and December 2007. The worker referred the case to the Claims and Collection unit for determining an overpayment amount. The Repayment Investigator obtained verification of the Social Security benefits from Social Security.
- 4) Exhibit D-3 verifies that at the Defendant's husband began received Social Security income in October in the amount of \$1025. which was the amount after Medical Premium deduction. The \$1118.50 was the correct gross amount. This Exhibit also verified that the Defendant received \$186. in Social Security in October, November and December and her daughter received \$186. each of those months. This document from Social Security did not indicate the date in October that the income was received.
- 5) The Repayment Investigator established a Food Stamp overpayment amount of \$495. This claim was based on the reported Social Security income as well as the unreported Social Security income for October, November and December. The reported Child Support was not considered by this Investigator.
- 6) The Repayment Investigator for Hardy County requested this Administrative Disqualification Hearing to determine whether the Defendant had committed an intentional program violation (IPV) for failing to report all of the household income during that October 2, 2007 application.
- 7) The Defendant was advised of the date and time for this hearing and she failed to appear. The Repayment Investigator testified that this was the Defendant's first alleged violation of Food Stamp program rules.
- 8) **WV Income Maintenance Manual Policy § 1.4, states:** Individuals who have committed an Intentional Program Violation (IPV) are ineligible for a specified time, determined by the number of previous (IPV) disqualifications.
- 9) **WV Income Maintenance Manual Policy § 20.2 states:** Intentional Program Violations include making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.
- 10) **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.
- 11) **According to policy in WV Income Maintenance Manual Section 9.1,A,2,g,** the disqualification penalty for having committed an Intentional Program Violation is twelve months for the first violation, twenty-four months for the second violation, and permanent disqualification for the third violation.

12) **7 Code of Federal Regulations Section 273.16 states:**

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 for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

13) **WV Income Maintenance Manual Policy §1.2**

The Client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.

**VIII. CONCLUSIONS OF LAW:**

- 1) Chapter 20.2 of the Income Maintenance Manual clearly provides that an Intentional Program Violation includes the concealing or withholding of facts. The Defendant clearly did not report Social Security income for her and her daughter during her Food Stamp application on October 2, 2007. It is not clear however if she had already received this Social Security income for October.
- 2) Evidence and testimony is not clear and convincing that the Defendant intentionally withheld information. Exhibit D-3 only verifies that Social Security was received in October for the Defendant and for her daughter. It does not show that this was received on October 1, 2007 so that it could be reported to the Department on October 2, 2007.
- 3) Neither the Claims and Collection unit nor the caseworker considered the \$300. reported child support income and it is not clear why this was not counted. The correct overpayment amount therefore is not clear in this case and could be in part caused by agency error.

**IX. DECISION:**

It is the finding of this Hearing Officer that the Department failed to prove by clear and convincing evidence that this Defendant committed an intentional program violation, IPV. It

is the ruling of this Hearing Officer to **reverse** the Department's proposed action to impose a 12-month sanction for an IPV.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 21st Day of August 2008.**

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**Sharon K. Yoho  
State Hearing Officer**