



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

August 21, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held August 12, 2008 for the purpose of determining whether an Intentional Program Violation (IPV) was committed by you.

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.

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).

Information submitted at the hearing reveals that you intentionally provided false and misleading information about your household income in order to receive Food Stamp benefits for which you were not legally entitled.

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 October 1, 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: 08-BOR-1360**

**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 21, 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 hearing was convened on August 12, 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:**

Sally Musick, State Repayment Investigator, DHHR  
Jonathan Merrifield, ESW, DHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION(S) 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 USDA Code of Federal Regulations  
Common Chapters Manual, Chapter 700  
West Virginia Income Maintenance Manual ' 1.2, 1.4, 9.1, 10.3, 10.4 & 20.2

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

**Department's Exhibits:**

- DHS-1 ES-FS-5, Food Stamp Claim Determination
- DHS-2 Combined Application and Review Form (CAF) – dated 11/8/07
- DHS-3 Notice of Potential Error
- DHS-4 Income Verification from [REDACTED] and [REDACTED]
- DHS-5 Food Stamp Allotment Determination (EFAD printout from RAPIDS) – benefit issuance for period November 8, 2007 through April 30, 2008.
- DHS-6 DFA-RR-1, Right and Responsibilities signed on 11/8/08
- DHS-7 West Virginia Income Maintenance Manual (WVIMM) Chapter 1.2 and 2.2
- DHS-8 West Virginia Income Maintenance Manual (WVIMM) Chapter 9.1A.2.h and 20.2
- DHS-9 Case Comments dated 11/8/07

**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 May 9, 2008. 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 August 12, 2008 hearing was mailed to the Defendant on July 11, 2008 via First Class Mail as the Defendant is a current recipient of benefits and resides at an address known to be good by the Department.
- 3) The hearing was scheduled to convene at 10:00 a.m., however, as of 10:15 a.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, 740.20), the hearing was conducted without the Defendant in attendance.

- 4) The Department contends that the Defendant intentionally violated the Food Stamp Program regulations by failing to report income she was receiving through employment at REM when she completed an application for Food Stamp benefits on November 8, 2007 (DHS-2). Page 10 of Exhibit DHS-2 (CAF) reveals that the Defendant reported that the only income received in the household was from [REDACTED]'s employment at [REDACTED].
- 5) The Department's witness testified that the Defendant was questioned about any and all sources of income on November 8, 2007 and Exhibit DHS-9 corroborates the Department's contention.
- 6) The Department submitted Exhibit DHS-4, income verification from [REDACTED] and [REDACTED] to verify the Defendant was employed at the time of application and had been employed with [REDACTED] since November 19, 2003. Wages for the period in question were reported by [REDACTED] and used to complete the calculations for an accurate Food Stamp benefit amount. Exhibit DHS-5 reveals that the assistance group (AG) was not eligible for any Food Stamp benefits (\$0) during the period November 8, 2007 through April 30, 2008.
- 7) Department's Exhibit DHS-1 (Food Stamp Claim Determination) demonstrates that by providing false and misleading information about her household income, the Defendant received \$617 in Food Stamp benefits for which she was not legally entitled during the period November 8, 2007 through April 30, 2008.
- 8) The Department cited the Rights and Responsibilities form (Exhibit DHS-6) that was completed and signed by the Defendant on the day of application (November 8 2007). The Defendant marked "yes" to item #4 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.

- 9) 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 {emphasis added} and the number in the benefit group.
- 10) West Virginia Income Maintenance Manual § 10.3 confirms that earned income must be considered when determining Food Stamp eligibility and benefit amount.
- 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 (assistance group) 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 §740.11.D. Intentional Program Violation - 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 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.

#### **VIII. CONCLUSIONS OF LAW:**

- 1) 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.
- 2) The evidence reveals that on November 8, 2007, the Defendant provided false and misleading information about her income in order to receive Food Stamp benefits for which she was not legally entitled. This clearly establishes intent.
- 3) The evidence is clear and convincing that the Defendant intentionally committed a Food Stamp 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 October 1, 2008.

#### **IX. DECISION:**

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

The Agency=s proposal to apply a Food Stamp disqualification is **upheld**. The Disqualification period will begin effective October 1, 2008.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 21<sup>st</sup> Day of August, 2008.**

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**Thomas E. Arnett  
State Hearing Officer**