



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

September 29, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 23, 2008 for the purpose of determining whether or not an Intentional Program Violation occurred requiring a repayment of an overissuance 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 regarding your husband's status as a convicted drug felon.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to impose an Intentional Program Violation and a repayment of an overissuance of Food Stamps.

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-1948

**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 September 23, 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 September 23, 2008 on a timely appeal, filed August 19, 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
_____, Defendant's Husband

Danita Bragg, Repayment Investigator

Bonnie Price, 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 an Intentional Program Violation occurred requiring a repayment of Food Stamps.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 1.2, 9.1, and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1 Food Stamp Claim Determination Form

DHS-2 Food Stamp Allotment Determination Screen (EFAD) from Rapids Computer System

DHS-3 Food Stamp Issuance/Disbursement Screen (IQFS) from Rapids Computer System

DHS-4 Rights and Responsibilities Form and Combined Application Form dated January 31, 2008

DHS-5 ██████████ County Circuit Court Sentencing Order dated December 17, 2007

DHS-6 West Virginia Income Maintenance Manual § 9.1

DHS-7 West Virginia Income Maintenance Manual § 20.2

DHS-8 Code of Federal Regulations § 273.16(c)

Defendants' Exhibits:

D-1 None

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 August 21, 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 August 6, 2008 that the Department had reason to believe she intentionally violated the Food Stamp program by failing to report her husband's status as a drug felon at review. The result was an overpayment of \$387 in Food Stamps.

- 3) Defendant had a Food Stamp review on January 31, 2008. Defendant's husband, _____, was present at the review also. Defendant and her husband failed to report that _____ had recently been convicted of a drug felony. Defendant's caseworker, Bonnie Price, discovered the fact several months after the Food Stamp case had been certified.
- 4) Danita Bragg, Repayment Investigator, submitted the sentencing order for Mr. _____ dated December 17, 2007 into evidence (DHS-5). It stated that Mr. _____ had pled guilty to the felony offense to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

Ms. Bragg also presented into evidence the Rights and Responsibilities form and Combined Application Form dated January 31, 2008 signed by both Defendant and Mr. _____ (DHS-4). The Combined Application Form listed no member of the household as a drug felon which was signed off on by Defendant and Mr. _____. Defendant and Mr. _____ both checked off on statement number 3A and signed the Rights and Responsibilities form which read:

I understand if I or any member of my household is found guilty in a federal, state or local court of trading Food Stamp benefits for firearms, ammunition, explosives or controlled substances; is a convicted felon for possession, use, or distribution of a controlled substance(s); or is found guilty of trafficking \$500 or more in Food Stamp benefits, the guilty party will be permanently disqualified from participating in the Food Stamp program.

- 5) Ms. Price testified that she interviewed Defendant and Mr. _____ on January 31, 2008. She stated she specifically asked if any household members were drug felons. Defendant and Mr. _____ did not report to her at that time that Mr. _____ had in fact been convicted of a drug felony. Ms. Price stated she also gave Defendant and Mr. _____ the opportunity to review the information printed on the Combined Application Form before they signed it. Ms. Price stated the Rights and Responsibilities form is given to all clients when they first register with the receptionist. Defendant and Mr. _____ had already completed and signed it prior to the interview (DHS-4).
- 6) The Department contends that Defendant has been a Food Stamp recipient since April 1997 and has read and signed many application and review forms as well as Rights and Responsibilities forms. Defendant was aware of the importance of reporting accurate household information at review.
- 7) Mr. _____ testified that he has been into the local office two (2) times, including the review on January 31, 2008. He stated that on both occasions, he was never asked if any household member had a drug felony conviction. Mr. _____ stated Ms. Price did not give them the opportunity to review the Combined Application Form prior to signing it. They were handed the back signature page and was asked to sign it. They trusted the information it contained was correct. Mr. _____ admitted to reading and signing the Rights and Responsibilities form prior to the interview.

- 8) Defendant testified that she had been asked previously if anyone in the household was a drug felon but was not asked that question on January 31, 2008 or at her most recent review. Defendant stated she assumed the policy had changed and a drug felony no longer mattered for Food Stamps. They were not trying to hide the fact that Mr. _____ had been convicted, it had been in the newspapers. She also admitted to reading and signing the Rights and Responsibilities form prior to the interview.
- 9) Both Defendant and Mr. _____ testified that they misread statement number 3 of the Rights and Responsibilities form that explained drug felons would be permanently disqualified from the Food Stamp program. They way it was worded; it seemed the document was referring to selling Food Stamps for drugs. Had they read the statement correctly, they would have reported Mr. _____'s recent conviction.
- 10) West Virginia Income Maintenance Manual § 1.2 E states:

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:

- Denial of application
- Closure of an active Assistance Group (AG)
- Removal of the individual from the AG
- Repayment of benefits
- Reduction in benefits

- 11) West Virginia Income Maintenance Manual § 9.1 A (2)g states:

Persons who are excluded by law as found below are ineligible and may not be a separate AG. The periods of ineligibility are as follows:

REASON FOR EXCLUSION	LENGTH OF EXCLUSION
Receipt of simultaneous multiple benefits as determined by an ADH or conviction in a state or federal court, due to a fraudulent statement with respect to identity or place of residence.	10 years
Fleeing to avoid prosecution, or custody/confinement after conviction, for a crime or attempt to commit a crime that is a felony under the law of the place from which the individual is fleeing	Ineligible while identified in this category
Violating a condition of probation or parole which was imposed under federal or state law.	Ineligible as long as the violation continues

Trafficking in Food Stamp benefits prior to 8/23/96, for an amount less than \$500, which resulted in a conviction, an agreement which results in a court finding, rather than a conviction or a signed disqualification agreement. See item i below for trafficking Food Stamp benefits for a controlled substance.	Permanent
Convicted on or after 8/23/96 of trafficking in Food Stamp benefits involving \$500 or more.	Permanent
Convicted of a felony offense which occurred on or after 8/23/96 which involved possession, use or distribution of a controlled substance as defined by section 802 (6) of the Controlled Substance Act	Permanent

12) West Virginia Income Maintenance Manual § 20.2 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.

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 signed off on the Rights and Responsibilities form indicating that she had read and understood its contents. This included the statement regarding permanent disqualification for drug felons. Claimant has also signed numerous Rights and Responsibilities forms prior to the January 2008 review. Defendant's caseworker presented credible testimony that she had questioned Defendant about anyone being a drug felon at her Food Stamp review.
- 3) Defendant intentionally failed to report accurate household information at her Food Stamp review and was issued Food Stamps for which she was not eligible for. Defendant will be required to repay the Food Stamp overissuance of \$387.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal of an Intentional Program Violation and repayment of \$387 in Food Stamps. Repayment

arrangements must be made, as specified on the Notice of Food Stamp overissuance, within 30 days from the date of this decision.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of September, 2008.

**Kristi Logan
State Hearing Officer**