



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 24, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held March 20, 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 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. Your disqualification from the Food Stamp program will begin effective November 1, 2008.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Debbie Roberts, Repayment Investigator

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

_____,

Defendant,

v.

Action Number: 07-BOR-2492

**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 24, 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 March 20, 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:

Debbie Roberts, Repayment Investigator

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS 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, Chapter 1.2
West Virginia Income Maintenance Manual, Chapter 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Benefit Recovery Referral Screen Print dated May 30, 2007
- D-2 West Virginia Income Maintenance Manual, Chapter 1.2, E
- D-3 Food Stamp Claim Determination form (ES-FS-5); Food Stamp Calculation Sheets (ES-FS-5a); Food Stamp Allotment Determination Screen Prints
- D-4 7 CFR §273.16 USDA Code of Federal Regulations
- D-5 Combined Application and Review Form (CAF) dated May 5, 2006
- D-6 Rights and Responsibilities form (DFA-RR-1) dated May 5, 2006
- D-7 Combined Application and Review Form (CAF) dated October 31, 2006
- D-8 Rights and Responsibilities form (DFA-RR-1) dated October 31, 2006
- D-9 Case Comments Screen Prints (2) from May 10, 2006 through November 8, 2006
- D-10 Letters (2) requesting Wage Verification (IFM-5B) dated July 18, 2007; Employment Data and Wage History form (IFM-5D) completed July 26, 2007; Wage verification from _____ Company, Inc.; Employment Data form completed August 3, 2007; Wage History form (IFM-5B) completed August 30, 2007; Wage History form (IFM-5D) completed August 4, 2007; Wage History from _____
- D-11 West Virginia Income Maintenance Manual, Chapter 2.2
- D-12 West Virginia Income Maintenance Manual, Chapter 20.6
- D-13 Notification of Intent to Disqualify form (IG-BR-44a) dated October 17, 2007; Waiver of Administrative Disqualification Hearing form (IG-BR-44)
- D-14 West Virginia Income Maintenance Manual, Chapter 20.2

VII. FINDINGS OF FACT:

- 1) On May 30, 2007, a referral (Exhibit D-1) for overissuance of Food Stamps was sent to the Department's Investigations and Fraud Management (IFM) Unit. The referral alleges that the Defendant withheld his earnings, resulting in an overissuance of Food Stamp benefits. The Department notified the Defendant of the Department's allegations, and mailed the Defendant a Waiver of Administrative Disqualification Hearing form (Exhibit D-13). Testimony from the Department confirmed that the

Defendant did not return the waiver form. This Administrative Disqualification Hearing was subsequently requested by the Department.

- 2) The hearing convened as scheduled at 11:30 a.m., and as of 11:45 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.
- 3) The Code of Federal Regulations, 7 CFR §273.16(c), defines an Intentional Program Violation (IPV) as:

(c) Definition of intentional Program violation. 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).

- 4) The Department presented Combined Application and Review Forms and Rights and Responsibilities forms dated May 5, 2006 and October 31, 2006 (Exhibits D-5, D-6, D-7, and D-8). All forms were signed by the Defendant and the Defendant's spouse. Neither Food Stamp application listed earned income in the household.
- 5) The Department presented case comments (Exhibit D-9) dated October 31, 2006. These comments state, in pertinent part:

MR [*sic*] STATED HE HAD NOT WORK [*sic*] FOR 2 YRS.

- 6) After receiving the initial recovery referral (Exhibit D-1), the Department requested and received wage verification from two of the Defendant's employers. _____, Inc. verified uninterrupted earnings for the Defendant from October 2005 through July 2007. The _____ verified earnings for the Defendant for May 2006 and from November 2006 through May 2007 (Exhibit D-10).
- 7) The West Virginia Income Maintenance Manual, Chapter 1.2, E, states, in pertinent part:

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 the application

- Closure of the active AG
- Removal of the individual from the AG
- Repayment of benefits
- Reduction in benefits

The action taken by the Worker depends on the specific requirement. These actions are found with the specific policy or in this Chapter under the program-specific information.

VIII. CONCLUSIONS OF LAW:

- 1) The Department clearly established that earned income was received by the Defendant that was withheld during two separate eligibility interviews with the Department. The Department showed that this unreported income resulted in a Food Stamp overissuance from May 2006 through April 2007.
- 2) The Department also clearly established the intent of the Defendant to conceal or withhold this information to receive Food Stamps for which he would not have otherwise been entitled. The Department showed that the Defendant made an initial application and a review of eligibility during which time he had earnings but did not report them. The Department documented that this was directly asked, and Defendant's response that he had not worked for two years. The Department was correct in its determination that an IPV was committed by the Defendant.

IX. DECISION:

Intentionally withholding or concealing 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 Defendant will be disqualified from the Food Stamp program for a twelve (12) month period to begin effective November 1, 2008.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of September, 2008.

Todd Thornton
State Hearing Officer