



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Bob Wise
Governor

Paul L. Nusbaum
Secretary

January 6, 2005

Dear Mr. _____ :

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held December 2, 2004.

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.

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 revealed that you failed to report earned income you were receiving Aegis during a Food Stamp redetermination on November 16, 2001. By intentionally withholding information about your household income, you received \$429 in Food Stamp benefits to which you were not entitled in December 2001 and January 2002.

It is the decision of the State Hearing Officer that you committed an Intentional Program Violation and a disqualification penalty of one (1) year will be applied. This disqualification will begin March 1, 2005.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Roger Kimble, SRI, DHHR

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an administrative disqualification hearing concluded on January 6, 2005 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 December 2, 2004.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The **Food Stamp Program** is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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 an EBT card to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

Roger Kimble, SRI, DHHR representative

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

IV. QUESTION 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, Appendix A

West Virginia Income Maintenance Manual Sections 1.2, 9.1 and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

D-1 Redetermination form with Rights and Responsibilities signed and dated by the Defendant on November 16,

2001.

- D-2 Rapids Employee Wage Data
- D-3 Verification of wage/employment data from Aegis (IQI), Inc.
- D-4 Food Stamp Claim Determination form
- D-5 West Virginia Income Maintenance Manual Sections 1.2, 9.1, 10.3 and 20.2

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) A request for an Administrative Disqualification Hearing was received by the Board of Review from the Department's State Repayment Investigation unit. The Department 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 12 months.
- (2) Notification of the December 2, 2004 hearing was mailed to the Defendant on October 12, 2004 via Certified, Restricted Delivery mail. The Defendant's signature appears on the return receipt dated October 13, 2004.
- (3) The hearing convened as scheduled at 10:30 a.m. As of 10:45 A.M., the Defendant failed to appear. As set forth in regulations [7 CFR 273.16 (e) (4)], and State Policy (700 of Common Chapters Manual Appendix A Part F), the hearing was conducted without the Defendant in attendance.
- (4) The Department submitted evidence to indicate that the Defendant completed a Food Stamp redetermination on November 16, 2001 (D-1) and failed to report his employment with Aegis (IQI), Inc. The Defendant reported the loss of his previous employment with General Delivery and reported his only household income as unearned income received monthly from a family member.
- (5) The Defendant marked "yes" to the requirements in the Rights and Responsibilities (DFA-RR1) section included in Exhibit 1, and his signature is found on page 6 of that document.
- (6) Verification received by the Department reveals the Defendant began employment with Aegis on October 26, 2001 and ended his job with that company on January 18, 2002 (D-3).
- (7) Employee Wage Data (D-2) received via Rapids reveals the Defendant earned \$1,893.18 and \$570.95 from IQI, Inc. in the fourth quarter of 2001 and the first quarter of 2002, respectively.
- (8) A Food Stamp Claim Determination form (D-4) shows a loss to the Food Stamp Program of \$429 for December 2001 and January 2002.
- (9) West Virginia Income Maintenance Manual § 1.2 (E) states that it is the client's responsibility to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- (10) West Virginia Income Maintenance Manual § 10.3, CC, 1 states that employment wages are considered countable earned income for the Food Stamp Program.
- (11) West Virginia Income Maintenance Manual § 20.2:
When a benefit 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.

- (12) 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, g) 1st Offense: 1 year (Disqualification)
- (13) West Virginia Income Maintenance Manual § 20.2 C (2):
IPVs (Intentional Program Violations) include making false or misleading statements, misrepresentations, the concealment or withholding of facts and committing any act that violates the Food Stamp Act of 1977, Food Stamp Regulations or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.
- (14) 7 CFR § 273.16 (e) (6) Code of Federal Regulations:
The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an Intentional Program Violation.

VIII. DECISION:

Policy provides that an Intentional Program Violation (IPV) for purposes of the Food Stamp Program will include the making of false or misleading statements, misrepresentations or the concealment or withholding of facts in attempting to secure Food Stamp benefits.

Evidence is clear that the Defendant intentionally misrepresented his household situation by withholding information necessary in determining his eligibility for Food Stamps. By intentionally withholding information about his employment and earnings, the Defendant received an over issuance of Food Stamp benefits in the amount of \$429. The withholding or concealment of information to secure benefits constitutes a clear violation of the regulations. Based on evidence presented, I find the violation intentional.

The Agency's request for a one (1)- year disqualification is **upheld**, with the disqualification period beginning on March 1, 2005. Only the Defendant is subject to this disqualification.

IX. RIGHT OF APPEAL:

See Attachment

X. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29