



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
150 Maplewood Avenue  
Lewisburg, WV 24901  
Telephone (304) 647-7476 Fax: (304) 647-7486

**Bob Wise**  
Governor

**Paul L. Nusbaum**  
Secretary

January 13, 2005

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

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

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held January 4, 2005.

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.

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 (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 coupons. (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 20.2(D)(2)(e) of the WV Income Maintenance Manual and 7 CFR Section 273.16

The information submitted at your hearing revealed that you were employed at Fairlea One Stop Citgo at the time you completed a food stamp application in October, 2003. You did not report this information on the application.

It is the ruling of the State Hearing Officer that you did commit an Intentional Program Violation. You will be disqualified from participation in the Food Stamp Program for twelve months beginning March, 2005.

Sincerely,

Margaret M. Mann  
State Hearing Officer  
Member, State Board of Review

cc: Board of Review  
Edward Eye, Repayment Investigator

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

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**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 4, 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 originally convened on January 4, 2005.

It should be noted here that the defendant is a current recipient of food stamp benefits.

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

**III. PARTICIPANTS**

Edward Eye, Repayment Investigator

The defendant failed to appear after being given proper and timely notice of the hearing.

Presiding at the hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED**

The question to be decided is whether it was shown by clear and convincing evidence that the defendant, \_\_\_\_\_, committed an Intentional Program Violation.

**V. APPLICABLE POLICY**

**Common Chapters Manual, Chapter 700, Appendix A, Section B, reads in part:**

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.

\_\_\_\_\_, \_\_\_\_\_  
**(Part V. continued)**

**Section 20.2 of the West Virginia Income Maintenance Manual reads in part:**

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 entitlement the AG received and the entitlement the AG should have received.

**7 CFR § 273.16 (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).

**7 CFR § 273.16 (e) (6) Criteria for determining Intentional Program Violation.**

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, Intentional Program Violation as defined in paragraph (c) of this section.

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED**

- DHS-1) Article 273.16c of Federal Register definition of an IPV
- DHS-2) West Virginia Income Maintenance Manual Chapter 1.2E RE: Client Responsibility
- DHS-3) Application dated 10/09/03
- DHS-3a) Rights & Responsibilities Form dated 10/09/03
- DHS-4) Benefit Recovery Referral dated 11/07/03
- DHS-5) Employment Data and Income Verification from Employer
- DHS-6) New Hire Information through Data Exchange
- DHS-7) Bureau of Employment Programs Wage History
- DHS-8) West Virginia Income Maintenance Manual Chapter 20.6 Re: False Statement & Misrepresentation
- DHS-9) Food Stamp Claima Determinations (ES-FS-5)
- DHS-10) Copies of Notification of Intent to Disqualify and Waiver
- DHS-11) West Virginia Income Maintenance Manual Chapter 20.2 Re: Repayment
- DHS-12) ADH Hearing Summary

**VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**A. Findings of Fact:**

1. The defendant completed a screening form and application for food stamps on 10/09/03 certifying it was her responsibility to provide complete and truthful information and affixed her signature certifying under penalty of perjury that the statements were true and correct. (DHS-3)
2. The defendant reported that the person working in the home was \_\_\_\_\_. He was working at the Ronceverte Service Station and verification of his employment was provided 10/10/03. (DHS-3 and DHS-10)
3. The defendant signed the Rights & Responsibilities 10/09/03 (DHS-3a) certifying all statements on the form have been read by her or read to her and she understood them. All the information given is true and correct and she accepts those responsibilities. Statement #6 regarding Administrative Disqualification

Requirements was completed. Statement #42 which reads in part:

**(Part VII. continued)**

"I understand if I give incorrect or false information or if I fail to report changes, then I may be required to repay any benefits I receive. I may also be prosecuted for fraud and I understand that any information given is subject to verification by an authorized representative of the DHHR. Also, it is **understood** that any person who obtains or attempts to obtain welfare benefits from the DHHR by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device can be charged with fraud....."

4. A Benefit Recovery Referral was received on the case 11/07/03. (DHS-4) The referral reads:

"\_\_\_\_\_ came in for review and was working and never told worker. We are unsure when she started."

5. BEP Wage Details Printout shows \_\_\_\_\_ was employed at Fairlea One-Stop. Earnings were listed in the fourth quarter of 2003 and first quarter of 2004. (DHS-6)

6. Employment Data from the manager of Fairlea One-Stop Citgo shows the defendant was employed from 09/26/03 and terminated 01/30/04. The dates she was paid on include 10/03/03, 10/10/03, 10/17/03, 10/24/03. and 10/31/03. (DHS-5)

7. The failure to report earnings from Fairlea One Stop Citgo resulted in an overissuance of food stamps in the amount of \$569.00 for the period 10/09/03 through 11/30/03. (DHS-7)

**B. Conclusions of Law:**

1. Policy states that "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)."

2. Un-refuted testimony shows the defendant did not report she was working at Fairlea One Stop Citgo on an application for food stamps 10/09/03. She was employed 09/26/03 and was paid on 10/03/03.

3. The defendant was overpaid \$569.00 in food stamps as a result of not reporting her employment.

4. Policy dictates that the IPV claim is the difference between the entitlement the AG received and the entitlement the AG should have received.

**VIII. DECISION**

After reviewing the information presented during the hearing and the applicable policy and regulations, it is the finding of the State Hearing Officer that the failure of the defendant to report her employment at the time of application constitutes an intentional withholding and she did commit an Intentional Program Violation. The defendant will be disqualified for twelve months beginning March, 2005. Repayment will be initiated as policy dictates.

**IX. RIGHT OF APPEAL**

See Attachment.

**X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.