



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

November 2, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held November 1, 2005.

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.

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(c)(2) and 9.1 (A)(2)(g) of the WV Income Maintenance Manual and 7 CFR Section 273.16.

The information which was submitted at your hearing revealed that you committed an intentional program violation of the Food Stamp Program by failing to report your son's employment and earned income from OK Maintenance which caused an overissuance of Food Stamps in the amount of \$1846 for the periods of August through October, 2003 and July through October, 2004.

It is the decision of the State Hearings Officer that you committed an Intentional Program Violation of the Food Stamp Program and you will be individually disqualified from participation in the Food Stamp Program for a period of one (1) year beginning December, 2005.

Sincerely,

Thomas M. Smith
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: 05-BOR-6575

**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 November 1, 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. It should be noted that the defendant did not attend the hearing but the hearing was convened in her absence as an appointment letter was sent by regular mail on September 15, 2005 notifying her of the date, time, and location of the hearing and the defendant had an active Food Stamp case at the time the appointment notice was mailed.

II. PROGRAM PURPOSE:

The Program entitled Food Stamp Program 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:

1. Debbie Roberts, Repayment Investigator.

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

IV. QUESTIONS 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 of the Food Stamp Program.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 1.2, 9.1, 10.3, 10.4, 20.2.
Federal Food Stamp Regulations Sections 273.9, 273.16.
Common Chapters Manual Section 700, Appendix A.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 Copy of benefit recovery referral.
- DHS-2 Copy of WV Income Maintenance Manual Section 1.2.
- DHS-3 Copy of Food Stamp Claim determination (20 pages).
- DHS-4 Copy of Federal Regulations /Section 273.16 (12 pages).
- DHS-5 Copy of case comments 6-18-03.
- DHS-6 Copy of case comments 7-31-03 (2 pages).
- DHS-7 Copy of case comments 8-14-03.
- DHS-8 Copy of case comments 9-19-03.
- DHS-9 Copy of case comments 9-26-03
- DHS-10 Copy of case comments 10-14-03
- DHS-11 Copy of combined application/review form 10-14-03 (22 pages).
- DHS-12 Copy of rights and responsibilities 10-14-03 (5 pages).
- DHS-13 Copy of case comments 11-17-03 (6 pages).
- DHS-14 Copy of case comments 5-21-04.
- DHS-15 Copy of case comments 10-21-04.
- DHS-16 Copy of combined application/review form 10-15-04 (18 pages).
- DHS-17 Copy of rights and responsibilities 10-15-04 (4 pages).
- DHS-18 Copy of case comments 12-9-04.
- DHS-19 Copy of WV Income Maintenance Manual Section 2.2 B (2 pages).
- DHS-20 Copy of WV Income Maintenance Manual Section 20.6.
- DHS-21 Copy of appointment letter 6-30-05.
- DHS-22 Copy of Notification of Intent to Disqualify 7-21-05 (3 pages).
- DHS-23 Copy of WV Income Maintenance Manual Section 20.1 (6 pages).

VII. FINDINGS OF FACT:

- 1) The Investigations and Fraud Management (IFM) Unit received a referral that the defendant failed to report employment and earned income of her son causing an overissuance of Food Stamps.
- 2) The defendant's son, _____, started working for OK Maintenance in June, 2003 and received his first pay check on 6-23-03 and was paid through 10-13-03 and again was paid starting on 5-7-04 through 10-8-04 (Exhibit #DHS-3) and the defendant failed to report his employment at all to the WVDHHR.
- 3) A Food Stamp overissuance occurred for the periods of August through October, 2003 and July through October, 2004 in the amount of \$1846 due to the unreported income.
- 4) The defendant had opportunities to report her son's employment and earned income including on 7-29-03 when a School Clothing Allowance application was received by the local office and no income was reported for _____ (Exhibit #DHS-6) and on 7-31-03 when the caseworker phoned the defendant to ask about a vehicle and the defendant did not report the income of _____, on 8-14-03 when the defendant was in the local office to ask about help with a gas bill but did not mention _____' income (Exhibit #DHS-7), on 9-19-03 when an NEMT application was approved for her other son, _____, without mention of _____' income (Exhibit #DHS-8), on 9-26-03 when a new EBT card was issued and no mention was made of _____' income (Exhibit #DHS-9), on 10-14-03 when the defendant completed a Food Stamp review but did not report _____' income (Exhibits #DHS-10 & #DHS-11), on 5-21-04 and 10-21-04 when NEMT forms were received without mention of _____' income (Exhibits #DHS-14 & #DHS-15), and on 10-15-04 when a review was completed and _____' income was not reported (Exhibit #DHS-16).
- 5) The defendant completed application/review forms on 10-14-03 and 10-15-04 (Exhibits #DHS-11 and #DHS-16) and signed the rights and responsibilities acknowledging her understanding of her reporting requirements and the penalties for intentional program violation (Exhibits #DHS-12 and #DHS-17).
- 6) According to Common Chapters Manual, Chapter 700, Appendix A, Section B, 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.
- 7) WV Income Maintenance Manual Section 20.2, C, 2 states that once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV. See Section 9.1, A, 2, g.
- 8) WV Income Maintenance Manual Section 9.1, A, 2, g states that persons who have been found guilty of an IPV are ineligible as follows: 1st offense: 1 year, 2nd offense: 2 years, 3rd offense: permanent.

VIII. CONCLUSIONS OF LAW:

Common Chapters Section 700, Appendix A defines an intentional program violation as having intentionally made a false statement or concealed or withheld facts. The defendant concealed information about her son's employment and earned income on numerous occasions, including during reviews for Food Stamps completed on 10-14-03 and 10-15-04 and during other contacts made with the Department as listed in Findings of Fact #4. The evidence shows that the failures of the defendant to report her son's income were intentional acts on her part. The defendant committed an intentional program violation which caused a Food Stamp overissuance of \$1846 for the periods of August through October, 2003 and July through October, 2004.

IX. DECISION:

It is the decision of the State Hearing Officer that the defendant committed an intentional program violation of the Food Stamp Program and she will be individually disqualified from participation in the Food Stamp Program for a period of one (1) year beginning December, 2005.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd Day of November, 2005.

Thomas M. Smith
State Hearing Officer