



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

December 14, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held December 12, 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 that _____ was living in your home and had earned income which caused an overissuance of Food Stamps in the amount of \$1059 for the period of April through June, 2005.

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 February, 2006.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

_____,

Defendant,

v.

Action Number: 05-BOR-6872

**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 December 12, 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 November 2, 2005 notifying her of the date, time, and location of the hearing and the defendant had an active Medicaid 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. Brian Shreve, 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:

- A Copy of federal Food Stamp regulations 273.16 (6 pages).
- B Copy of benefit recovery referral.
- C Copy of Food Stamp Claim determination (19 pages).
- D Copy of case comments 5-27-05.
- E Copy of Bureau for Child Support Enforcement Narrative 5-24-05.
- F Copy of New Hire Information Printout.
- G Copy of Bureau for Child Support Enforcement Narrative 6-14-05.
- H Copy of Combined Application/Review form 4-4-05 (10 pages).
- H Copy of case comments 4-4-05 and 4-12-05.
- I Copy of WV Income Maintenance Manual Section 1.2.
- J Copy of WV Income Maintenance Manual Section 2.2 (2 pages).
- K Copy of WV Income Maintenance Manual Section 20.2 (8 pages).
- L Copy of WV Income Maintenance Manual Section 20.6 (2 pages).
- M Copy of notification of intent to disqualify 9-12-05 (4 pages).

VII. FINDINGS OF FACT:

- 1) The Investigations and Fraud Management (IFM) Unit received a referral that the defendant failed to report that the father of her children (_____) was living in her home and was employed which caused an overissuance of Food Stamps (Exhibit #B).

- 2) On 5-27-05, the WV Works caseworker conducted a home visit to the defendant's home and asked if the father of the children (_____) lived in the home after receiving information from the Bureau for Child Support Enforcement (BCSE) that Mr. _____ had testified in court that he lived with the defendant and the defendant admitted that Mr. _____ had lived in her home since the birth of a baby on 12-20-04 (Exhibit #D).

- 4) Verification showed that Mr. _____ started working for the Regional Jail Authority on 3-1-05 making \$1,677 per month and this income caused the defendant to be ineligible for Food Stamps for the period of April, through June, 2005 with an overissuance in the amount of \$1059 (Exhibits #G & #C).
- 5) The defendant received Food Stamps in the amount of \$1059 from April through June, 2005 after completing an application/review form on 4-4-05 and the defendant signed the rights and responsibilities acknowledging her understanding of her reporting requirements and the penalties for intentional program violation (Exhibit #H).
- 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 or withheld information about the father of her children (_____) living in her home when she completed an application/review form on 4-4-05. Mr. _____ was living with the defendant and had earned income of \$1677 per month which caused the defendant's countable monthly income to exceed the monthly income limit for Food Stamps. An overissuance of \$1059 occurred during the period of April through June, 2005 and the evidence and testimony show that the defendant intentionally concealed information regarding household composition and income in order to receive Food Stamps for which she was not eligible. The defendant committed an intentional program violation.

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 February, 2006.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of December, 2005.

**Thomas M. Smith
State Hearing Officer**