



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 13, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your Administrative Disqualification Hearing held December 13, 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 provided false and misleading statements in order to receive Food Stamp benefits to which you were not entitled.

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: Chairman, Board of Review
Teresa Smith, SRI, DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
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 13, 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 13, 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 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:

Jan Kinser, CI, DHHR
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 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 App A
West Virginia Income Maintenance Manual Chapter 1.2, 2.2, 9.1, 10.3, 10.4 & 20

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department Exhibits

DHS-1 Combined Application and Review Form dated 6/26/03, 10/23/03 and 11/17/03.

DHS-2 Case Comments from 4/22/03 through 5/25/04.

DHS-3 Cash Assistance Claim Determination and supporting documentation for February and March 2004.

DHS-4 Court Order from the Family Court of Ohio County, Civil action 04-D-27.

DHS-5 Food Stamp Claim Determination February 2004 through April 2004.

DHS-6 Notification of Intent to Disqualify dated July 30, 2004.

DHS-7 WVIMM Policy Manual, 1.2, 1.4, 9.1, 10.3, 20.2 & Appendix A of Common Chapters Manual Chapter 700.

DHS-8 Employment verification for _____, requested by Teresa Smith on July 21, 2004.

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 Repayment Investigation Unit on or about September 10, 2003. The Department contends that the Defendant has committed an Intentional Program Violation and is recommending that she be disqualified from participation in the Food Stamp Program for a period of 12 months.
- 2 Notification of the December 13, 2004 hearing was mailed to the Defendant via First Class Mail on November 1, 2004 as the Defendant is known to be a current recipient of benefits through the Department.
- 3 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 (700 of Common Chapters Manual Appendix A Part F), the hearing was conducted without the Defendant in attendance.
- 4 The Defendant completed an application for Food Stamp benefits on October 22, 2003 (exhibit D-1). The Assistance Group (AG) consisted of the Defendant, _____ and their child, _____.
- 5 The Defendant contacted the Department in the first week of November 2003 and reported that _____ was no longer in the household. The Defendant completed an application for WV WORKS and Food Stamp benefits on November 17, 2003 at which time she reported an AG of two (2), the Defendant and her daughter, _____. The Defendant received WV WORKS cash assistance and Food Stamp benefits based on this information until April 30, 2004.
- 6 The Department submitted exhibit DHS-4, Family Court Order from Ohio County West Virginia, Civil Action # 04-D-27, wherein it is recorded that on May 26, 2004 the Defendant and _____ testified that they have lived together continuously since June 2003. Mr. _____ testified that he was unemployed from June 2003 through December 9, 2003 but that he commenced employment at Wheeling Pittsburgh Steel on December 10, 2003.
- 7 Exhibit DHS-8 verifies that _____ was employed by Wheeling-Pittsburgh Steel from 12/11/03 to 5/29/04.
- 8 The Department contends that the Defendant intentionally misrepresented her household situation to receive benefits. The Department submitted exhibits DHS-3 (Cash Assistance Claimant Determination for February & March 2004) that reflects a loss to the WV WORKS Program in the amount of \$402 and exhibit DHS-5, (Food Stamp Claim Determination for the period February 2004 through April 2004) that reflects a \$534 loss to the Food Stamp Program.

- 9 West Virginia Income Maintenance Manual § 1.2 (E) states that it is the client's responsibility is 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 § 10.4, C:
This section contains policy relating income disregards and deductions and computation of, and eligibility for, Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and number (of persons) in the benefit group.
- 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):
IPV's (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.
- 13 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)
- 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 her household situation by providing misleading and false statements to secure Food Stamp benefits through the Department. The concealment or misrepresentation of information 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 request for a one (1) year disqualification from participation in the Food Stamp Program is **upheld**.

Only the Defendant is subject to this disqualification.

This disqualification will begin March 1, 2005

IX. RIGHT OF APPEAL:

See Attachment

X. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29