



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

September 8, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held July 18, 2006 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred.

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.

Eligibility for the Food Stamp program is based on current policy and regulations. Some of these regulations state as follows: 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).

The information submitted at the hearing revealed that you intentionally provided false and misleading information about your household composition in order to receive Food Stamp benefits for which you were not entitled.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. This disqualification will begin October 2006.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Sally Musick, State Repayment Investigator

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

_____,
Defendant,

v.

Action Number: 06-BOR-1306

**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 September 8, 2006 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 July 18, 2006.

II. PROGRAM PURPOSE:

The Program entitled Food Stamps 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 food stamp benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

Sally Musick, State Repayment Investigator, DHHR
Cheryl McKinney, SHO, DHHR (observing)

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

IV. QUESTIONS TO BE DECIDED:

The question is whether or not the Defendant committed an Intentional Program Violation 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 ' 1.2, 2.2, 10.4, 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

| | |
|-------|---|
| DHS-1 | Combined Application and Review Form signed by the Defendant 9/8/05 |
| DHS-2 | Case Comments for period 1/26/06 – 3/1/06 |
| DHS-3 | Hours & Earning Analysis – Employee Earnings Detail for check dates 1/1/05 to 12/31/05 [REDACTED] for [REDACTED] |
| DHS-4 | Food Stamp Claim Determination for period 10/14/05 thru 2/28/06 accompanied by calculations for each month in which overpayment occurred. |
| DHS-5 | Rights and Responsibilities signed by the Defendant on 9/8/05 |
| DHS-6 | WV Income Maintenance Manual § 1.2.E & 2.2 |
| DHS-7 | WV Income Maintenance Manual § 9.1 |
| DHS-8 | WV Income Maintenance Manual § 20.2 |

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from State Repayment Investigator, Sally Musick, on March 3, 2006. Ms. Musick 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 one (1) year.
- 2) Notification of the July 18, 2006 hearing was mailed to the Defendant on July 18, 2006, via First Class Mail as the Defendant is a current recipient Medicaid benefits and resides at an address known to be good by the Department.
- 3) The hearing convened as scheduled at 11:00 a.m., and as of 11:15 a.m., the Defendant failed to appear. As set forth in the Code of Federal Regulations [7 CFR §273.16 (e) (4)], and State Policy (WVDHHR Common Chapters Manual, Chapter 700, Appendix A Part F), the hearing was conducted without the Defendant in attendance.

- 4) The Defendant was notified via a Notification of Intent to Disqualify on February 10, 2006 that she intentionally violated the Food Stamp Program by failing to report her spouse, _____, was in the home at the 9/8/05 application. The Department submitted exhibits DHS-1 through DHS-8 to support its claim.
- 5) The Department submitted Exhibit DHS-1 (Combined Application and Review Form) completed on September 8, 2005 to show that the Defendant failed to include her spouse as a household member. The Defendant reported that she was separated from her spouse and that her household consisted of her daughter, her granddaughter and herself. The Defendant signed page 12 of Exhibit DHS-1 indicating that all of the information provided was true and that she understood it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits for which she is not entitled.
- 6) Exhibit DHS-5 is the Rights and Responsibilities portion of the application and further explains the imposition of Food Stamp penalties if it is determined by a court action or an Administrative Disqualification Hearing that an Intentional Program Violation was committed. The Defendant signed Exhibit DHS-5 on September 8, 2005.
- 7) Department's Exhibit DHS-2 includes Case Comments that were made in the RAPIDS computer system on January 26, 2006 when the Defendant completed an application for SSI-Related Medicaid. The Department Worker noted that she spoke to the Defendant's husband, _____ and got income verifications from him. The following notation was documented by the Worker – "Noted on NEHR he started work at _____ on 9/14/05 and showed this as his address ven tho{sic} _____ did not indicate he was in HH at that time for her fs app. Sending referral to repayment for unspecified amt as I believe he never left HH."
- 8) Testimony received at the hearing from Sally Musick, State Repayment Investigator, reveals that Ms. Musick contacted _____ by phone in February 2006. Investigator Musick testified that _____ admitted he moved into the household in June 2005 when Ms. _____ moved to _____ Ave.
- 9) The Department submitted Exhibit DHS-3 to verify. _____'s income during the period September 26, 2005 through December 30, 2005.
- 10) The Department presented exhibit DHS-4 (Food Stamp Claim Determination) to show that by providing false information about household composition, the AG received \$761 in Food Stamp benefits for which it was not eligible during the period October 2005 through February 2006.
- 11) West Virginia Income Maintenance Manual ' 10.4:
This section contains policy relating income disregards and deductions and to computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and the number in the benefit group.
- 12) West Virginia Income Maintenance Manual ' 1.2 (E):
The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.

- 13) West Virginia Income Maintenance Manual ' 20.2:
When a AG (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.
- 14) 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)
- 15) Common Chapters Manual 700, Appendix A, provides that an Intentional Program Violation 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 benefits.

VIII. CONCLUSIONS OF LAW:

- 1) The evidence reveals that the Defendant intentionally provided false and misleading information when she failed to report that _____ was in the home during the September 8, 2005 Food Stamp application/review. While the physical evidence verifies Mr. _____'s income, the uncontested testimony presented by the Department confirms that the Defendant's husband was in the home since June 2005.
- 2) The policy and regulations that govern the Food Stamp program state that a Food Stamp Program Violation has occurred when an individual intentionally makes a false or misleading statement, or misrepresented, concealed or withheld facts relating to the use, presentation, transfer, acquisition , receipt or possession of Food Stamp benefits.
- 3) There is clear and convincing evidence to indicate that the Defendant committed an intentional program violation when she reported that her husband was not in the home.
- 4) In accordance with Food Stamp policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first time offense is twelve months (one year).
- 5) Only the Defendant is subject to this disqualification. The Defendant's 1-year disqualification will begin effective October 2006.

IX. DECISION:

The making of false or misleading statements or the misrepresentation of facts to secure food Stamp benefits constitutes a clear violation of the regulations. Based on evidence presented, I find the violation intentional.

The Agency=s proposal to apply a Food Stamp disqualification is **upheld**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of September 2006.

Thomas E. Arnett
State Hearing Officer