



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 26, 2006

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held May 18, 2006 to determine whether you committed an Intentional Program Violation (IPV).

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 Section 20.2 and Code of Federal Regulations-7 CFR Section 273.16)

Testimony provided during the hearing failed to substantiate that you intentionally withheld information about your household composition in regard to your Food Stamp benefits.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to impose an IPV penalty and disqualify you from the Food Stamp Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
____ McCourt, Repayment Investigator, DHHR

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

____,

Defendant,

v.

Action Number: 06-BOR-1353

**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 May 26, 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 fair hearing was convened on May 18, 2006.

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 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 an EBT card to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

____, Defendant
____, father of Defendant's son
____, State Repayment Investigator, DHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Defendant committed an Intentional Program Violation and should be disqualified from participation in the Food Stamp Program for a period of one (1) year.

V. APPLICABLE POLICY:

7 CFR Section 273.16 USDA Code of Federal Regulations
Common Chapters Manual Chapter 700, Appendix A
West Virginia Income Maintenance Manual Sections 1.2E, 2.2, 9.1A3 and 20.2C2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Department notifications and correspondence
- D-2 Hearing summary
- D-3 Application form, case comments, Food Stamp claim form/calculations
- D-4 West Virginia Income Maintenance Manual Sections 1.2E, 9.1A3 and 20.2C2

Claimant's Exhibits

- C-1 Letter from ____ and ____ ____

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing (D-1) was received by the Board of Review from State Repayment Investigator ____ on March 9, 2006. Ms. McCourt contends that the Defendant committed an Intentional Program Violation and recommends that the Defendant be disqualified from participation in the Food Stamp Program for a period of one (1) year.
- 2) Evidence submitted by the Department indicates that the Defendant completed a Food Stamp redetermination (D-3) on July 12, 2005 and was approved for Food Stamps for herself and her son, _____. The Claimant also signed Food Stamp Rights and Responsibilities at that time.

- 3) On November 29, 2005, the case worker received a telephone call from the Defendant to report that ____ was in the custody of her parents.
- 4) On January 17, 2006, a Food Stamp redetermination was completed and the Defendant reported that ____ had been residing with her parents since May 2005.
- 5) The Department sent the Defendant a Notification of Intent to Disqualify (D-1) on February 13, 2006.
- 6) Ms. ____, who stated that she has some mental disorders, testified that she had informed her worker during her July 2005 Food Stamp redetermination that her son's custody issues were still pending. She testified that ____ had gone to stay with her parents in May 2005 because she and the child's father had been fighting. Ms. ____ reported that she still had custody of ____ at that time and she did not know how the judge would order in regard to the custody issue. She testified that ____ would travel back and forth between the households during that time period and that she would cook for him when he was in her home. Ms. ____ testified that she did not intentionally withhold information from the Department, but was waiting for the issue to be settled with a final custody order from the judge.

Ms. ____ provided a letter (C-1) from her parents, ____ and ____ ____, which indicated that a final custody order was filed with the court system on October 24, 2005, but that they did not receive a copy of the order until the first part of November 2005.

Ms. McCourt testified that receipt of Food Stamps is based on physical custody, not legal custody.

- 7) West Virginia Income Maintenance Manual Section 1.2E (D-4) states:
The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 8) West Virginia Income Maintenance Manual Section 2.2 states that reportable changes for Assistance Groups not subject to simplified reporting must be reported within 10 days of the date the change becomes known to the Assistance Group.
- 9) West Virginia Income Maintenance Manual Section 9.1A states that a Food Stamp Assistance Group is comprised of individuals for whom food is customarily purchased and prepared together as an Assistance Group. This section defines "customarily" as over 50 percent of meals on a monthly basis.
- 10) West Virginia Income Maintenance Manual Section 20.2:
When an AG (Assistance 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.

- 11) West Virginia Income Maintenance Manual Section 20.2C2:
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: (Section 9.1, A, 2, g) 1st Offense: 1 year (Disqualification).
- 12) Common Chapters Manual 700, Appendix A, Section B, 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.
- 13) Common Chapters Manual 700, Appendix A, Section G (The Decision) states that the State Hearing Officer 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 as defined in Section B of Appendix A.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when an Assistance 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.
- 2) If it is determined that an Intentional Program Violation has been committed, a disqualification penalty is imposed on the Assistance Group. For a first offense, the penalty is one (1) year.
- 3) Evidence reveals that the Defendant failed to clearly inform her worker of her son's living arrangements at the time of her July 2005 redetermination. However, the Claimant testified that her son traveled back and forth between households and she had not provided the information because she was awaiting a final custody order. The Defendant did, however, report that her son had left her home in November 2005 after she received the final custody order.
- 4) It is the conclusion of the State Hearing Officer that the Defendant did not have a sufficient understanding of reporting requirements in regard to her son's living arrangements and evidence is insufficient to determine that the Defendant intentionally withheld facts related to her receipt of Food Stamps.
- 5) The State Hearing Officer finds that the Defendant did not commit an Intentional Program Violation and should not be disqualified from participation in the Food Stamp Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to disqualify the Claimant from the Food Stamp Program for a period of one (1) year based on the commission of an Intentional Program Violation.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th Day of May, 2006.

Pamela L. Hinzman
State Hearing Officer