



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 30, 2005

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 3, 2006. Your hearing request was based on the Department of Health and Human Resources' claim that you have committed an intentional program violation.

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: 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 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 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 9.1,A,2,g of the WV Income Maintenance Manual and 7 CFR Section 273.16 .

The information submitted at your hearing revealed that on your Food Stamp application of December 16, 2005 you withheld information regarding your felony conviction on drug charges.

It is the decision of the State Hearings Officer to uphold the action of the Department to categorize a Food Stamp overpayment claim as an intentional program violation claim and apply a sanction.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

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

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

____,

Defendant,

v.

Action Number: 06-BOR-1371

**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 a hearing concluded on May 3, 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 3, 2006 on a request, filed by the Agency on March 9, 2006.

It should be noted here that any adverse action of the agency has been postponed pending a hearing decision.

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, Repayment Investigator

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

The defendant failed to appear after being notified by certified restricted delivery mail sent on March 23, 2006.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether it was shown by clear and convincing evidence that the defendant has committed an act of intentional program violation.

V. APPLICABLE POLICY:

Common Chapters Manual, Chapter 700, Appendix A, Section B
West Virginia Maintenance Manual Section 1.2; 1.4;9.1;20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp application dated December 16, 2005
- D-2 Case comments dated December 16, 2005
- D-3 Prison Match information
- D-4 Case Comments dated February 15, 2006
- D-5 WV Income Maintenance Manual Section 9.1.A.2.f
- D-6 EBT Detail Journal, IQFS computer screen
- D-7 Claim computation sheet
- D-8 Statement from case worker, Michelle Angus
- D-9 Rights and Responsibilities signed December 16, 2005
- D-10 WV Income Maintenance Manual Policy Section: 1.2
- D-11 WV Income Maintenance Manual Policy Section: 20.2

VII. FINDINGS OF FACT:

- 1) _____ completed a Food Stamp application with caseworker Michelle Angus on December 16, 2005. Ms. _____ was living alone at that time. Ms. _____ replied NO to question: (has anyone in your household been convicted of a drug felony for possession, use or distribution of a controlled substance committed on or after 8/23/96). Ms. Angus provided a signed statement (Exhibit D-8). She reports that she did ask Ms. _____ the above question and that she always completes application/reviews in the same manner.
- 2) The Department approved this Food Stamp application in an expedited manner due to no income being reported.

- 3) On February 15, 2006, the Department was researching a Prison Match Data Exchange (Exhibit D-3) and contacted the [REDACTED] and Clerk's office and verified that Ms. _____ had pled guilty to a felony drug charge on September 18, 2003.
- 4) The caseworker referred the case to the Department's Claims and Collections unit on February 15, 2006.
- 5) The Claims and Collection unit made a determination that Ms. _____ was not eligible to receive Food Stamps and established an overpayment claim of \$379.
- 6) **WV Income Maintenance Manual Policy § 1.2, 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.
- 7) **WV Income Maintenance Manual Policy § 1.4, states:** Individuals who have committed an Intentional Program Violation (IPV) are ineligible for a specified time, determined by the number of previous (IPV) disqualifications.
- 8) **WV Income Maintenance Manual Policy § 20.2 states:** Intentional Program Violations include making false or misleading statements, misrepresentations, concealing or withholding information.
- 9) **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.
- 10) **According to policy in WV Income Maintenance Manual Section 9.1,A,2,g,** the disqualification penalty for having committed an Intentional Program Violation is twelve months for the first violation, twenty-four months for the second violation, and permanent disqualification for the third violation.
- 11) **WV Income Maintenance Manual Section 9.1.A.2.f:**
Persons who are excluded by law as found below are ineligible and may not be a separate AG:
Convicted of a felony offense, which occurred on or after 8/23/06, which involved possession, use or distribution of a controlled substance, are excluded permanently from the Food Stamp program.

VIII. CONCLUSIONS OF LAW:

- 1) Policy 20.2 is clear that the intentional withholding of information is considered a violation of the Food Stamp program.
- 2) Policy 1.4 and 9.1 stipulates that if an intentional program violation has been committed, a disqualification penalty must be applied. The disqualification for a first

time offense is twelve months. Policy 9.1.A.2.f stipulates that persons convicted of a drug felony on or after 8/23/06 are permanently disqualified from participation in the Food Stamp program.

- 3) There was clear and convincing evidence presented to support the agency's belief that the defendant intentionally withheld information necessary to accurately determine eligibility for Food Stamp benefits. The defendant has committed an act of intentional program violation as it is outlined in Chapter 700.

IX. DECISION:

It is the finding of the Hearing Officer that the defendant was aware of the obligation to report accurate information and that she chose to withhold information regarding her drug conviction. It is the ruling of the Hearing Officer that the defendant has committed an act of intentional program violation. It is the ruling of this Hearing Officer that Ms. ____ is disqualified from participation in the Food Stamp program permanently due to her drug conviction.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of May 2006.

Sharon K. Yoho
State Hearing Officer