



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 31, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 18, 2006. Your hearing was based on the Department of Health and Human Resources' proposal that you 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 Stamps is based on current policy and regulations. Some of these regulations state as follows: 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.

The information submitted at your hearing revealed: You intentionally withheld reporting your household unearned income on several occasions and in a timely manner. This resulted in an over issuance of Food Stamp Benefits in the amount of \$4,618.00 for the period covering July 22, 2003 through November 30, 2005.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department that you committed an Intentional Program Violation. You will be sanctioned from the Food Stamp Program for a period of twelve (12) months. The sanction will be effective October 2006.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Mrs. Jennifer Butcher, Repayment Investigator

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

_____ ,

Defendant,

v.

Action Number: 06-BOR-1683

**West Virginia Department of
Health and Human Resources,**

Respondent.

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 August 31, 2006 for Mr. _____. 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 Administrative Disqualification Hearing was scheduled for July 18, 2006 on a timely appeal filed April 19, 2006. The Scheduling Notice, Request for an Administrative Disqualification Hearing, and Waiver of Administrative Disqualification Hearing forms were mailed to Mr. _____ via Restricted Delivery on April 21, 2006 (Exhibit -10). Mr. _____ signed the Restricted Delivery receipt on April 25, 2006.

The issue in this particular matter involves the defendant, Mr. _____, intentionally withholding facts about household unearned income and intentionally failing to report in a timely manner. This allegedly resulted in an over issuance of Food Stamp Benefits in the amount of \$4,618.00. The Department is seeking a ruling of Intentional Program Violation; Disqualification from the Food Stamp Program for a period of one (1) year; and Repayment of the over issued Food Stamp Benefits.

It should be noted here that, the Defendant was not receiving Food Stamp Benefits at the time of the hearing. The Scheduling Notice was not returned, and Mr. _____ did not attend the scheduled hearing.

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 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:

Jennifer Butcher, Repayment Investigator

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., 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.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 9.1 (A) (2) (f) and, Common Chapters Manual, Chapter 700, Appendix A, Section B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

Exhibit -1 Application dated 08/29/02
Exhibit -2 Application dated 07/22/03
Exhibit -3 Application dated 07/16/04
Exhibit -4 Application dated 06/17/05
Exhibit -5 School Clothing Allowance Application dated 07/06/05
Exhibit -6 Benefit Recovery Referral dated 10/26/05
Exhibit -7 Request for verification of Social Security Benefits dated 02/14/06
Exhibit -8 Food Stamp Claim Determination
Exhibit -9 Application dated 08/29/02
Exhibit -10 IG-BR-30; 31; 44 dated 04/21/06

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- for
- 1) The Investigation and Fraud Management Unit received a referral from the Income Maintenance Unit that _____ failed to report the onset of Social Security Benefits himself, wife and two children. Because of this unreported income, an over issuance of Food Stamps in the amount of \$4,618.00 occurred between July 22, 2003 through November 30, 2005.
 - 2) The West Virginia Department of Health and Human Resources requested this hearing for the purpose of determining if _____ committed an Intentional Program Violation (IPV). The Code of Federal Regulations Article 273.16c defines an IPV as (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 Program Regulations, or any state statute relating to the use, presentation, acquisition, receipt, or possession of the Food Stamp EBT card or ATP's.
 - 3) An Application for Medicaid and Rights and Responsibilities dated August 29, 2002 were completed and signed by both _____ and _____. _____ read or had read to him the Rights and Responsibilities (R&R). He signed both forms accepting the responsibilities, and admitting that everything he reported was true and correct to the best of his knowledge (Exhibit -1).
 - 4) An Application was taken on July 22, 2003 for Food Stamps, Medicaid and School Clothing Allowance. _____ provided verification of _____'s Social Security benefits, and reported his Medicare premium would begin August 2003. This was all the income _____ reported at the application (Exhibit -2).
 - 5) A Food Stamp and Medicaid review was completed on July 16, 2004. The Rights and Responsibilities and Application were again signed by _____ and _____. By signing, they were accepting everything as being true and correct to the best of their knowledge. The only income reported was _____'s Social Security Benefits in the amount of \$1056.60 (Exhibit -3).
 - 6) A Food Stamp and Medicaid review was completed on June 17, 2005. Again the Application and R&R were read and signed, to accept all responsibilities, and attesting that all was true and correct to the best of their knowledge. The only income reported was _____'s Social Security Benefits and Child Support Arrearages (Exhibit -4)
 - 7) A School Clothing Allowance application dated July 6, 2005, was received in the DHHR office on July 13, 2005. The application did not list any household earned or unearned income (Exhibit -5).
 - 8) A Benefit Recovery Referral dated October 26, 2005 was received from the Income Maintenance Unit. It stated, "_____'s husband was approved for SS Disability in 2003, her and two children have also been receiving \$181.00 a month (Changes each year with COLA). They have never reported this income. Lump sum payment was probably received in 2003" (Exhibit -6).
 - 9) Mrs. Butcher requested income verification from the Social Security Administration on February 14, 2006. The verification was received by the Kanawha DHHR office on February 23, 2006. According to the document, the onset of _____'s Social Security Benefits

each began February 2002 with a lump sum payment in March 2003. He began receiving his monthly benefit in April 2003. The form also shows _____, _____ and _____ received their lump sum payments in the amount of \$2,063.25, in April 2003. They each began receiving their monthly benefits in May 2003 (Exhibit -7).

10) A Food Stamp Claim Determination worksheet was completed to determine the amount of Food Stamps the _____ household received from July 22, 2003 to November 30 2005. It took into account the reporting of only _____'s Social Security income and the corrected amount of Food Stamps if all of the household's Social Security income was reported (Exhibit - 8).

years. **11)** Mr. _____ has been receiving benefits through the Department for more than six each He along with wife _____, have completed many applications and reviews. On occasion, they either read or had read to them the Rights and Responsibilities. The last paragraph of the application states:

I understand my responsibility to provide complete and truthful information. I have reviewed or had read to me the information contained in this automated portion of the application form and I understand the information. I understand that it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits to which I am not by law entitled. Under penalty of perjury, I certify that the statements are true and correct.

Also stated in part on page 7 item # 42 of the R&R:

I understand if I give incorrect or false information or if I fail to report changes, then I may be required to repay any benefits I receive. I may also be prosecuted for fraud and I understand that any information given is subject to verification by an authorized representative of the DHHR Also, it is understood that any person who obtains or attempts to obtain welfare benefits from the DHHR by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device can be charged with fraud.

12) 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.

13) According to policy at WV Income Maintenance Manual Section 9.1 (A) (2) (f) 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.

14) The Code of Federal Regulations defines an Intentional Program Violation (IPV) in 7 CFR 273.16 as "... 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 for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of

coupons, authorization cards or reusable documents used as part of an automated benefit delivery system(access device).

VIII. CONCLUSIONS OF LAW:

1) 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.

2) Mr. _____ intentionally withheld reporting his household unearned income on several occasions, and in a timely manner. This resulted in an over issuance of Food Stamp Benefits in the amount of \$4,618.00 for the period covering July 22, 2003 through November 30, 2005.

IX. DECISION:

It is the decision of this State Hearing Officer that Mr. _____ committed an Intentional Program Violation. He will be sanctioned from the Food Stamp Program for a period of 12 months effective October 2006.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of August 2006.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**