



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

August 23, 2006

Dear Mr. and Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held August 21, 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 and evidence submitted at the hearing demonstrated that you violated Food Stamp Program regulations by failing to report earned income.

The State Hearing Officer finds that you committed an Intentional Program Violation and **upholds** the Department's proposal to disqualify each of you from participation in the Food Stamp Program for 12 months.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Teresa Smith, Repayment Investigator, DHHR

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

_____ and _____,

Defendants,

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

Action Number: 06-BOR-1962

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a hearing concluded on August 23, 2006 for _____ and _____. 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 August 21, 2006.

It should be noted here that the Defendants are current recipients 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:

Teresa Smith, State Repayment Investigator, DHHR

The Defendants failed to attend the hearing after having been given timely notice.

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 Defendants 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 9.1, 10.3 and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Application/redetermination form with rights and responsibilities dated December 23, 2005
- D-2 Employment verification for _____
- D-3 Food Stamp Claim Determination form
- D-4 Notification of Intent to Disqualify
- D-5 Applicable West Virginia Income Maintenance Manual Sections

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from State Repayment Investigator Teresa Smith on May 22, 2006. Ms. Smith contends that the Defendants, _____ and _____, committed an Intentional Program Violation and recommends that each of the Defendants be disqualified from participation in the Food Stamp Program for a period of one (1) year.
- 2) The Claimants completed a Food Stamp application/redetermination on December 23, 2005 (D-1). At that time, earned income was reported for _____, but no income was reported for _____. Ms. Smith contended that both Mr. and Mrs. _____ signed the application/redetermination form and indicated by their signatures that they were aware of their rights and responsibilities to provide true and accurate information.
- 3) On January 6, 2006, the case worker received New Hire information indicating that _____ was employed by _____ Industries. The worker requested and received verification (D-2) from Mrs. _____' employer verifying that she started work on December 2, 2005 and that her first pay was received on December 23, 2005.
- 4) Ms. Smith provided a Food Stamp Claim Determination form which shows that failure to report _____' income

information resulted in a \$128 Food Stamp over issuance to the benefit group for the month of January 2006.

- 5) West Virginia Income Maintenance Manual Section 10.3CC states that employment wages must be counted as earned income for the Food Stamp Program.
- 6) West Virginia Income Maintenance Manual Section 20.2 states:

Intentional Program Violations include making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.

The individual(s) who is found to have committed an IPV is ineligible to participate in the Program for a specified time, depending on the number of offenses committed.

An IPV can only be established in the following ways:

- The client signs an IG-BR-44, Waiver of Rights, to an ADH; or
- By an ADH decision; or
- By court decision.

Once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV.

- 7) West Virginia Income Maintenance Manual Section 9.1,A,2,g states that the penalty for a First Offense IPV is one (1)- year disqualification.
- 8) 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.
- 9) 7 Code of Federal Regulations Section 273.16 states:

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 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).

- 10) 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) If it is determined that an Intentional Program Violation has been committed, policy dictates that a disqualification penalty is imposed upon the household member(s). For a first offense, the penalty is one (1) year.
- 2) Policy requires the State Hearing Officer to base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the Defendant(s) committed, and intended to commit, an Intentional Program Violation.
- 3) The Defendants failed to report earned income for Mrs. _____ in conjunction with their December 23, 2005 Food Stamp application/redetermination even though Mrs. _____ had started her job on December 2, 2005.
- 4) Based on clear and convincing evidence presented during the hearing, the State Hearing Officer has determined that the Defendants have committed an Intentional Program Violation by failing to report accurate income information.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to disqualify each of the Defendants 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 23rd Day of August, 2006.

Pamela L. Hinzman
State Hearing Officer