



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
PO Box 6165
Wheeling, WV 26003

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 20, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 30, 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 filed applications on April, 25, 2005; July 25, 2005; August 8, 2005 and August 29, 2005 for benefits from the agency. On these applications you listed _____ -
-, _____ and _____ as living in your home. As a result of these applications you received Food Stamp benefits totaling \$3099 for the months of April 2005 through November 2005. Evidence provided at the hearing held October 30, 2006 revealed that these children were removed from your home on February 25, 2004 and were not in your household during the months you were certified for Food Stamp benefits for them. As a result, you were issued \$1538 in Food Stamp benefits for which you were not entitled.

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 twenty four (24) months. The sanction will be effective January 2007.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Teresa _____, Repayment Investigator

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

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

v.

Action Number: 06-BOR-1963

_____,
Defendant

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 October 30, 2006 for Ms. _____. 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. Notification of the October 30, 2006 hearing was mailed to the Defendant on September 28, 2006 via Certified Restricted Mail. An acknowledgment of receipt of the hearing notice was signed by _____ on October 3, 2006 and received by the agency on October 4, 2006.

It should be noted here that the defendant was not present during the 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:

Teresa _____, Repayment Investigator

Presiding at the Hearing was Melissa Hastings, 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, D _____, committed an intentional program violation.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 1.2E, 1.4L; WV Income Maintenance Manual Section 9.1A2h; WV Income Maintenance Manual Section 20.2 and Common Chapters Manual, Chapter 700, Appendix A, Section B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 Application for Medicaid and Food Stamps dated and signed by Defendant on 04/25/05
- DHS-2 Application for School Clothing Allowance dated and signed by Defendant 07/25/05
- DHS-3 Application for WV WORKS, School Clothing Allowance, Medicaid and Food Stamps dated and signed by Defendant 08/04/05.
- DHS-4 Application for WV WORKS, School Clothing Allowance, Medicaid and Food Stamps dated and signed by Defendant 08/30/05
- DHS-5 Statement dated October 30, 2006 signed by Jason Prettyman, Child Protective Service Worker, indicating dates children were removed from the home.
- DHS-6 Food Stamp Claim Determination form (ESSFS5) indicating dates of issuance as April 25, 2005 through November 30, 2005.
- DHS-7 Notification of Intent to Disqualify (IBGR44a) dated November 17, 2005 with Waiver of Administrative Disqualification Hearing (IGBR44) attached.
- DHS-8a WV Income Maintenance Manual Section 1.2 Client Responsibility
- DHS-8b WV Income Maintenance Manual Section 9.1g and h Food Stamp Eligibility Determination Groups
- DHS-8c WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures
- DHS-8d Common Chapters Manual Chapter 700 Appendix A, Section B
- DHS-9 Request for an Administrative Disqualification Hearing (IG-BR-30) dated 05/12/06
- DHS-10 Hearing Summary (IGBR31) dated 10/19/06

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Common Chapters Manual, Chapter 700, Appendix A, Section B, indicates an intentional program violation consists of having intentionally made a false statement, or misleading 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) WV Income Maintenance Manual Section 9.1 (A) (2) (f) indicates 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.
- 3) WV Income Maintenance Manual Section 1.2 E Client Responsibility indicates that it is the client's responsibility to provide information about his circumstances so the Worker is able to make a correct decision about eligibility.
- 4) WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures indicates that when an assistance group has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing an Intentional Program Violation claim.
- 5) Defendant was in the local DHHR Office on April 25, 2005 and completed an application for Food Stamp Benefits (**DHS-1**). Testimony from the department's representative indicates that the Defendant on page 1 (**DHS1**) requested that _____, _____, and _____ be included in the household for Food Stamp purposes.
- 6) Defendant was in the local DHHR office on July 25, 2005 and completed an application for WV School Clothing Allowance (**DHS2**). In Section II of this application Defendant listed herself, _____, _____ and _____ as household members. In Section V of this application Defendant acknowledged her rights and responsibilities by signing and dating the application 7-25-05.
- 7) Defendant was in the local DHHR office on August 4, 2005 and completed an application for WV WORKS, School Clothing Allowance, Medical Assistance and Food Stamps (**DHS3**). Testimony from the department's representative indicates that the Defendant on page 2 (**DHS3**) requested that _____, _____ I and _____ - _____ be included in the household for Food Stamp purposes.
- 8) Defendant was in the local DHHR office on August 29, 2005 and completed an application for WV WORKS, School Clothing Allowance, Medical Assistance and Food Stamps (**DHS4**). Testimony from the department's representative indicates that the Defendant on page 2 (**DHS4**) requested that _____, _____ and _____ be included in the household for Food Stamp purposes.
- 9) Department's representative provided a signed statement dated October 30, 2006 from Jason Prettyman, Child Protective Service Works for the Department of Health and Human Resources (**DHS5**) indicating that the children were removed from the home on

- February 25, 2004. The statement also indicates that _____ was returned to her mother _____ on May 18, 2005 and removed again on September 7, 2005.
- 10) Repayment Investigator, Teresa _____, prepared Food Stamp Claim Determination form ESFS5 (**DHS6**) indicating that Defendant was issued Food Stamp benefits from April 25, 2005 through November 30, 2005 totaling \$3099. When excluding the children from the household for these same months the household should have received \$1561 in Food Stamp benefits. The resulting overissuance was \$1538.
 - 11) Testimony from the department's representative indicates that Defendant was previously sanctioned for a 12 month period in August 2004.
 - 12) A request for an Administrative Disqualification Hearing (**DHS7**) was received by the Board of Review on May 22, 2006.
 - 13) The facts presented during this Administrative Disqualification Hearing supports the Department's proposal, that Defendant intentionally provided false information concerning her household composition during applications filed April 25, 2005; July 25, 2005; August 4, 2005; and August 29, 2005. As a result of the false information provided on these applications the Defendant received \$1538 in Food Stamp benefits for which she was not entitled.

VIII. CONCLUSIONS OF LAW:

- 1) Common Chapters Manual, Chapter 700, Appendix A, Section B, states that an intentional program violation consists of having intentionally made a false statement, 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) WV Income Maintenance Manual Section 1.2 indicates that the client is responsible for reporting accurate information to the worker when making an application for benefits. Evidence is clear that Defendant filed four applications including children _____ and _____ as household members when they were in fact removed from her home by Child Protective Services in February 2004 and were not living with the Defendant. Defendant's daughter, _____, was removed in February 2004 but was returned to Defendant in May 2005 and remained in the home until September 7, 2005.
- 3) WV Income Maintenance Manual Sections 9.1 and 20.2 indicates that claimant's found to have intentionally withheld information from the agency for the second time will be disqualified from participation in the Food Stamp Program for a period of twenty four months.
- 4) There is clear and convincing evidence that Defendant intentionally provided false information concerning her household composition when filing applications for Food Stamp benefits on April 25, 2005; July 25, 2005; August 4, 2005; and August 29, 2005 which resulted in Defendant receiving \$1538 in Food Stamp benefits for which she was not entitled.

IX. DECISION:

It is the decision of this State Hearing Officer to **UPHOLD** the Department's **PROPOSAL** that Defendant committed an Intentional Program Violation. A twenty four months disqualification period is to be applied to the Defendant effective January 2007 and collection action initiated for repayment of the \$1538 overissuance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of November 2006.

Melissa Hastings
State Hearing Officer