



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 1, 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 intentionally withheld reporting that you were receiving Food Stamp Benefits in the State of [REDACTED] when you applied for Food Stamp benefits on November 4, 2005 in West Virginia. You received Food Stamp Benefits for the period covering November 4, 2005 through December 31, 2005 for which you were not entitled. This resulted in an over issuance of Food Stamp Benefits in the amount of \$288.00.

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 December 2006.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Teresa Smith, Repayment Investigator

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

_____,
Defendant,

v.

Action Number: 06-BOR-1966

**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 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 First Class Mail as the Defendant is a current recipient of Medicaid benefits and resides at an address known to be good by the Department.

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 Smith, 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, _____, committed an intentional program violation.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 9.1 (A) (2) (f); Common Chapters Manual, Chapter 700, Appendix A, Section B and; WV Income Maintenance Manual Section 8.2 – (A) (1) Determining State Of Residence/Movement Between States.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1	Application dated 11/04/05 with Rights and Responsibilities signed 11/04/05
DHS-2	Case Comments dated 07/25/05 through 12/28/05 and Food Stamp Issuance History dated 11/02/05 and 12/02/05 from the State of [REDACTED]
DHS-3	Food Stamp Claim Determination (ESFS5) with issuance dates of 11/04/05 through December 31, 2005 totaling \$288.00
DHS-4	Notification of Intent to Disqualify (IGBR44a) dated 02/02/06 with a Waiver of Administrative Disqualification Hearing (IGBR44B) attached.
DHS-5a	WV Income Maintenance Manual Section 1.2E Client Responsibility
DHS-5b	WV Income Maintenance Manual Section 9.1g and h Individuals Excluded by Law
DHS-5c	WV Income Maintenance Manual Section 8.6 Non-Duplication of Benefits
DHS-5d	WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures
DHS-5e	Common Chapters Manual Chapter 700 Appendix A, Section B
DHS-6	Request for an Administrative Disqualification Hearing (IG-BR-30) dated 05/12/06
DHS-7	Hearing Summary (IGBR31) dated 10/16/06

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 8.6 Non-Duplication of Benefits indicates that a client may not receive Food Stamp benefits concurrently in more than one county in West Virginia or more than one state.
- 5) 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.
- 6) Respondent was in the local DHHR Office on November 4, 2005 and completed an application for Food Stamp Benefits (**DHS-1**). She signed the Rights and Responsibilities section of the application acknowledging Question #4 which states, "I understand if I am found to have committed an act of intentional program violation, I will not receive Food Stamp benefits as follows: First Offense – one year; Second Offense – two years; Third Offense-permanently. In addition, I will have to repay any benefits received for which I was not eligible."
- 7) Testimony from the department's representative indicates that the Respondent answered "No" to the question, "Have you received Food Stamps from another state?" on the application dated November 4, 2005 (**DHS-1**).
- 8) Testimony from the department's representative indicates that the Respondent's application (**DHS-1**) was approved with prorated benefits issued from the date of application for the month of November 2005 and a full month's benefits for December 2005.
- 9) Testimony from the department's representative indicates that a complaint call was received by the department advising that the Respondent was receiving Food Stamp benefits in [REDACTED]. The State of [REDACTED] was contacted and verification secured that Respondent received Food Stamp benefits from [REDACTED] in the months of November and December 2005 (**DHS-2**).
- 10) Repayment Investigator, Teresa Smith, prepared Food Stamp Claim Determination form ESFS5 (**DHS3**) indicating that claimant was issued Food Stamp benefits in November and December 2005 in the amount of \$152 and \$236 respectively for a total overissuance of \$288.

- 11) Respondent was issued a Notification of Intent to Disqualify with a Waiver of Administrative Disqualification Hearing attached (**DHS-4**) on February 2, 2006. Respondent failed to respond to this notification.
- 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 Respondent intentionally withheld reporting she was receiving Food Stamp Benefits, in the State of [REDACTED] when she filed an application for Food Stamp benefits from the State of West Virginia. By withholding this information from the department when she applied for Food Stamp benefits, the Respondent received duplicate benefits in the State of [REDACTED] and West Virginia for the months of November and December 2005.

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 and 8.6 indicates that the client is responsible for reporting accurate information to the worker when making an application for benefits and that client's cannot receive duplicate benefits from more than one state. Evidence is clear that an inquiry was made as to whether the claimant was receiving Food Stamp benefits from any other state and she responded "No".
- 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 first time will be disqualified from participation in the Food Stamp Program for a period of one year.
- 4) There is clear and convincing evidence that Respondent intentionally withheld reporting that she was receiving Food Stamp Benefits in the State of [REDACTED] when she applied and was approved for Food Stamp benefits in the State of West Virginia. By withholding this information claimant was issued Food Stamp benefits for the months of November and December 2005 totaling \$288 for which she was not entitled.

IX. DECISION:

It is the decision of this State Hearing Officer to **UPHOLD** the Department's **PROPOSAL** that Respondent committed an Intentional Program Violation. A one year disqualification period is to be applied to the claimant effective December 2006 and collection action initiated for repayment of the \$288 overissuance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of November 2006.

**Melissa Hastings
State Hearing Officer**