



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

September 21, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held August 22, 2006 for the purpose of determining whether or not you committed an Intentional Program Violation (IPV).

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: 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 ' 20.2 and Code of Federal Regulations- 7 CFR ' 273.16).

The information submitted at the hearing revealed that you intentionally provided false and misleading information about your household composition in order to receive Food Stamp benefits.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. This disqualification will begin November 2006.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

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

_____,
Defendant,

v.

Action Number: 06-BOR-1967

**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 an Administrative Disqualification Hearing concluded on September 21, 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 hearing was originally scheduled to convene on August 17, 2006, but was rescheduled to convene telephonically on August 18, 2006 to accommodate the Defendant's request. Because the Defendant did not receive her evidence timely, as agreed by all parties, the hearing was convened on August 22, 2006.

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, State Repayment Investigator, DHHR (Participated Telephonically)
_____, Defendant (Participated Telephonically)

Presiding at the Hearing was Thomas E. Arnett, 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 Defendant committed an intentional program violation and should be disqualified for a specified period from participation in the Food Stamp Program.

V. APPLICABLE POLICY:

7 CFR ' 273.16 USDA Code of Federal Regulations
Common Chapters Manual Chapter 700 App A
West Virginia Income Maintenance Manual ' 1.2, 9.1, 10.3, 10.4 & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

| | |
|-------|---|
| DHS-1 | Combined Application and Review Form and Rights and Responsibilities completed on April 7, 2005 |
| DHS-2 | BEP Unemployment Compensation Details |
| DHS-3 | Food Stamp Claim Determination |
| DHS-4 | Notification of Intent to Disqualify (IG-BR44a) |
| DHS-5 | West Virginia Income Maintenance Manual Chapter 1.2, 1.4, 9.1, 10.3 & 20.2 and WVDHHR Common Chapters Manual, Chapter 700, Appendix A |
| DHS-6 | Case Comments from 4/7/05 to 6/27/05 |

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 Defendant has committed an Intentional Program Violation and she is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of one (1) year.
- 2) On or about January 3, 2006, the Defendant was notified via a Notification of Intent to Disqualify (Exhibit DHS-4), that she intentionally violated the Food Stamp Program rules when she did not report that she was receiving unemployment benefits.
- 3) The Department presented evidence to indicate that the Defendant completed an application for WV WORKS, Food Stamp and Medicaid benefits on April 7, 2005 (Exhibit DHS-1). In her application, the Defendant reported that there is no earned or unearned income being received by any of the assistant group (AG) members (see case comments, Exhibit DHS-6). There is also a Quality Questionnaire that was completed by the Claimant at the time of application (acknowledged on the hearing record). This document indicates under #3 "yes" to the question of other income (unemployment is listed as other income) in the home and #4 reveals that the Defendant cited "Child Support" as the other income.

- 4) The Defendant signed page 12 of Exhibit DHS-1 indicating that all of the information provided was true and that she understood it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits for which she is not legally entitled. The Rights and Responsibilities portion of the application, signed by the Defendant on April 7, 2005, further explains the imposition of Food Stamp penalties if it is determined by a court action or an Administrative Disqualification Hearing that an Intentional Program Violation was committed.
- 5) The Department submitted Exhibit DHS-2, BEP Unemployment Compensation Details, which shows that the Defendant started receiving unemployment benefits at \$55 per week effective February 16, 2005.
- 6) The Department alleges that the Defendant's intentionally withheld information about her income to receive Food Stamp benefits. The Department submitted Exhibit DHS-3, Food Claim Determination, which shows that by failing to report unemployment income, the Defendant received \$495 in Food Stamp benefits for which she was not legally entitled.
- 7) The Claimant testified that she told her Worker about the \$55 weekly unemployment income. She is not sure why it was not recorded in her case during the interview. While it may be true that the Defendant's Worker could have forgotten to place unemployment income in her case during the interview, the Claimant reviewed the information completed by her Worker and signed the application indicating that it was true and accurate. Additionally, the Quality Questionnaire completed by the Claimant does not list unemployment income under question #4. Based on the evidence, I find the Claimant's testimony incredible.
- 8) West Virginia Income Maintenance Manual ' 10.3 indicates that Unemployment Compensation (income) counts as unearned income in the Food Stamp Program.
- 9) West Virginia Income Maintenance Manual ' 10.4 contains policy relating income disregards and deductions and to the computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and the number in the benefit group.
- 10) West Virginia Income Maintenance Manual ' 1.2 (E):
The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 11) West Virginia Income Maintenance Manual ' 20.2:
When a AG (benefit group) has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.

- 12) West Virginia Income Maintenance Manual ' 20.2 (C) (2):
Once an IPV (Intentional Program Violation) is established a disqualification penalty is imposed on the AG (assistance group) members who committed the IPV. The penalties are as follows: (' 9.1, A, 2, g) 1st Offense: 1 year (Disqualification)
- 13) Common Chapters Manual 700, Appendix A, 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.

VIII. CONCLUSIONS OF LAW:

- 1) The evidence reveals that the Defendant withheld information about her household income in order to receive Food Stamp benefits for which she was not entitled under law. The Defendant reviewed and signed her Combined Application and Review Form, as well as the Rights and Responsibilities Form, indicating that the information contained therein was true and accurate. While the Defendant alleges that the Worker must not have documented what she reported, unemployment compensation benefits were not documented on the Quality Questionnaire completed by the Defendant at the time of application. This evidence clearly establishes intent.
- 2) The policy and regulations that govern the Food Stamp program state that a Food Stamp Program Violation has occurred when an individual intentionally makes a false or misleading statement, or misrepresented, concealed or withheld facts relating to the use, presentation, transfer, acquisition , receipt or possession of Food Stamp benefits.
- 3) There is clear and convincing evidence to show that the Defendant committed an intentional program violation as defined in the Food Stamp policy and regulations.
- 4) In accordance with Food Stamp policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first time offense is twelve months (one year).
- 5) Only the Defendant is subject to this disqualification. The 1-year disqualification will begin effective November 2006.

IX. DECISION:

Intentionally making of false or misleading statement or misrepresenting facts to secure food Stamp benefits constitutes a clear violation of the regulations. Based on evidence presented, I find the violation intentional.

The Agency=s proposal to apply a Food Stamp disqualification is **upheld**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of September 2006.

**Thomas E. Arnett
State Hearing Officer**