



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

December 12, 2006

Dear Mr. and Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 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: Applications were filed for benefits from the agency by Mr. and/or Mrs. _____ on April 7, 2004; June 28, 2004; July 13, 2004 and January 14, 2005. On these applications the only household income reported was Social Security Disability and SSI. Persons included on the application were _____, _____ and _____. As a result of these applications the household received Food Stamp benefits totaling \$3759 for the months of April 2004 through May 2005. Evidence provided at the hearing held November 30, 2006 revealed that _____ was awarded Workmen's Compensation benefits with an initial lump sum payment made to Mr. _____ on March 5, 2004 in the amount of \$72,643.20. Following this lump sum payment regular bi-weekly payments were made to Mr. _____ in the amount of \$1030.40. By failing to report this income to the agency the household received \$3759 in Food Stamp benefits for which they 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 twelve (12) months. The sanction will be effective January 2007.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

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

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

v.

Action Number: 06-BOR-2142

_____,
Defendants

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 November 30, 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. Note that this hearing was originally scheduled for October 30, 2006 but was rescheduled at the Defendant's request. Notification of the November 30, 2006 hearing was mailed to each of the Defendants on October 30, 2006 via Certified Restricted Mail. An acknowledgment of receipt of the scheduling notice was signed by both Defendants on October 31, 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:

_____, Defendant
_____, Defendant
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 Defendants, _____ 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 10.3; 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-1a Application for Children's Health Insurance Program dated and signed by _____ on 04/06/04
DHS-1b Application for Children's Health Insurance Program dated and signed by _____ on 04/07/05
DHS-2 Application for School Clothing Allowance dated and signed by both Defendants on 06/24/04 and 06/28/04 respectively
DHS-3a Quality Questionnaire dated and signed by _____ on 07/13/04
DHS-3b Quality Questionnaire dated and signed by _____ on 01/14/05
DHS-4a Application for School Clothing Allowance and Food Stamps with Rights and Responsibilities dated and signed by _____ on 07/13/04
DHS-4b Application for Medical Assistance and Food Stamps with Rights and Responsibilities dated and signed by _____ on 01/14/05
DHS-5 Copy of Workmen's Compensation hearing decision for _____ dated February 17, 2004 signed by _____ Judge with copies of payments made to _____ from 03/05/04 through 11/03/04.
DHS-6 Food Stamp Claim Determination Form (ESFS5) for the time period April 2004 through May 2005.
DHS-7a Notification of Intent to Disqualify (IBGR44a) dated May 30, 2006 with Waiver of Administrative Disqualification Hearing (IGBR44) attached sent to _____.
DHS-7b Notification of Intent to Disqualify (IGBR44a) dated May 30, 2006 with Waiver of Administrative Disqualification Hearing (IGBR44) attached sent to _____.
DHS-8a WV Income Maintenance Manual Section 1.2 Client Responsibility

DHS-8b	WV Income Maintenance Manual Section 1.4L Repayment and Penalties
DHS-8c	WV Income Maintenance Manual Section 91. g and h Food Stamp Eligibility Determination Groups
DHS-8d	WV Income Maintenance Manual Section 10.3 Chart of Income Sources
DHS-8e	WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures
DHS-8f	Common Chapters Manual Chapter 700 Appendix A, Section B
DHS-9	Copy of an advertisement for R&B Tree Trimming and Removal
DHS-10	Request for an Administrative Disqualification Hearing (IG-BR-30) dated 06/12/06
DHS-11	Hearing Summary (IGBR31) dated 10/19/06

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Common Chapters Manual, Chapter 700, Appendix A, Section B (**DHS8f**), 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) Food Stamp Eligibility Determination Groups (**DHS8c**) 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 (**DHS8a**) indicates that it is the client's responsibility to provide information about his/her 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 (**DHS8e**) indicates 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) WV Income Maintenance Manual Section 10.3QQQQ Sources of Income Charts (**DHS8d**) indicates that Workmen's Compensation is considered unearned income when determining Food Stamp eligibility.
- 6) _____ filed an application for Food Stamp Benefits on July 13, 2004 (**DHS4a**). _____ filed an application for Food Stamp Benefits on January 14, 2005 (**DHS4b**). Both Defendants checked "Yes" to questions 4 and 42 of the Rights and Responsibilities on these applications which states in part:

I understand if I am found (by court action or an administrative Disqualification hearing) 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 entitled.

I understand, if I give incorrect or false information or if I fail to report changes that I am required to report, I may be required to repay any benefits I receive. I may also be prosecuted for fraud.

- 7) On each of these applications the Defendants also completed a Quality Questionnaire (**DHS3a and b**). On these questionnaires the Defendants reported that SSI and SSD were the sources of income in the household and they were received once a month. Pages 9 and 10 of both Food Stamp applications (**DHS4a and 4b**) indicate that _____ receives \$157 in SSI per month and _____ receives \$157 SSI and \$552 Social Security Disability per month. These applications also indicate that _____ receives zero in Workmen's Compensation per month.
- 8) In addition, Mrs. _____ filed Children's Health Insurance Program applications in April 2004 and April 2005 (**DHS1a and b**) in which Workmen's Compensation payments were not reported.
- 9) Information received from Workmen's Compensation (**DHS5**) shows that on February 17, 2004 a petition for workers' compensation on behalf of _____ was granted. The employer was directed to pay workers' compensation benefits to Mr. _____ at the rate of \$644 per week retroactive to June 22, 2001.
- 10) Information received from Workmen's Compensation (**DHS5**) shows that a lump sum payment was made to _____ dated March 5, 2004 in the amount of \$72,643.00. Evidence also indicates that starting on March 10, 2004 Mr. _____ received bi-weekly payments from Workmen's Compensation in the amount of \$1030.40.
- 11) Repayment Investigator, Teresa Smith, prepared Food Stamp Claim Determination forms ESFS5 (**DHS6**) indicating that Defendants were issued Food Stamp benefits from April 2004 through May 2005 totaling \$3759. When calculating the household's eligibility including the Workmen's Compensation income, the household would have been ineligible for Food Stamp benefits. The resulting overissuance was \$3759.
- 12) Notifications of Intent to Disqualify IGBR44a (**DHS7a and b**) were sent to the Defendants on May 30, 2006 along with a Waiver of Administrative Disqualification Hearing IGBR44. Testimony received from the department's representative indicates that Defendants responded indicating they did not intend to mislead the department.
- 13) A request for an Administrative Disqualification Hearing (**DHS10**) was received by the Board of Review on June 14, 2006.

- 14) Testimony received from the Defendants indicates that both Mr. and Mrs. _____ suffer from conditions which have had an affect on their memory. There was no documentary evidence offered by the Defendants to support their statements as to the memory loss.
- 15) The facts presented during this Administrative Disqualification Hearing supports the Department's proposal, that the Defendants intentionally failed to report accurate information concerning their household income during Food Stamp applications filed July 13, 2004 and January 14, 2005. In addition, the Defendants filed applications for the Children's Health Insurance Program in April 2004 and April 2004 and failed to report the Workmen's Compensation Income. It would seem that when given the opportunity on at least 4 occasions to provide accurate information to the agency the Defendants failed to do so. You cannot attribute memory loss on this many occasions as a defense for this failure to report regularly received income. As a result of the Defendant's failure to report accurate information on these applications, the Defendant received \$3759 in Food Stamp benefits for which they were 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 Defendants filed multiple applications and completed quality questionnaires for Food Stamp and other benefits in which Workmen's Compensation income was not reported. While memory loss may be used as a defense for a one time event, evidence is clear that in this case both Defendants not only failed to report the Workmen's Compensation income, they actually signed applications showing that the amount of Workmen's Compensation received was zero. The facts show that regular bi-weekly payments of \$1030.40 were being received.
- 3) WV Income Maintenance Manual Sections 9.1 and 20.2 indicates that claimant's found to have intentionally withheld information from the agency will be disqualified from participation in the Food Stamp Program for a period of twelve months for the first offense.
- 4) There is clear and convincing evidence that the Defendants intentionally provided false information concerning their household income when filing applications for Food Stamp benefits which resulted in the Defendants receiving \$3759 in Food Stamp benefits for which they were not entitled.

IX. DECISION:

It is the decision of this State Hearing Officer to **UPHOLD** the Department's **PROPOSAL** that the Defendants committed an Intentional Program Violation. A twelve months disqualification period is to be applied to both of the Defendants effective January 2007 and collection action initiated for repayment of the \$3759 overissuance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of December, 2006

Melissa Hastings
State Hearing Officer