



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 27, 2006

Dear Ms _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 1, 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 an application on December 30, 2005 for benefits from the agency. On this application you signed Rights and Responsibilities acknowledging your responsibility to report accurate information to the agency. The Customer Questionnaire completed by you for the application indicates that you responded "no" to the question "Is anyone living in the household employed? As a result of the December 30, 2005 application you received Food Stamp benefits totaling \$1746 for the months of January 2006 through April 2006. Evidence provided at the hearing held November 1, 2006 revealed that your husband _____ was working at the [REDACTED] in December 2005. By failing to report this additional household income at the December 30, 2005 application your household was issued \$1226 in Food Stamp benefits for which you were not entitled for the time period of January 2006 through April 2006.

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

cc: State Board of Review

Teresa Smith, 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-2671

_____,
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 November 1, 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 November 1, 2006 hearing was sent to the Defendant via First Class mail on September 28, 2006 as Defendant was a recipient of benefits from the agency.

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's husband
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 1.2E, 1.4L; WV Income Maintenance Manual; 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-1 Application for Medicaid and Food Stamps dated and signed by Defendant on 12/30/05
- DHS-2 Case Comments dated 12/22/05 through 05/05/06 consisting of 7 pages
- DHS-3 Statement from _____ received April 26, 2006 indicating _____'s base pay and average hours worked per pay period.
- DHS-4 Food Stamp Claim Determination form (ESSFS5) indicating dates of issuance as January 9, 2006 through April 2006
- DHS-5 Notification of Intent to Disqualify (IBGR44a) dated May 11, 2006 with Waiver of Administrative Disqualification Hearing (IGBR44) attached.
- DHS-6a WV Income Maintenance Manual Section 1.2 Client Responsibility
- DHS-6b WV Income Maintenance Manual Section 1.4L Repayment and Penalties
- DHS-6c WV Income Maintenance Manual Section 9.1g and h Food Stamp Eligibility Determination Groups
- DHS-6d WV Income Maintenance Manual Section 10.3 Chart of Income Sources
- DHS-6e WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures
- DHS-6f Common Chapters Manual Chapter 700 Appendix A, Section B
- DHS-7 Request for an Administrative Disqualification Hearing (IG-BR-30) dated 08/11/06
- DHS-8 Hearing Summary (IGBR31) dated 10/16/06

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Common Chapters Manual, Chapter 700, Appendix A, Section B (**DHS6f**), 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 (**DHS6c**) 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 (**DHS6a**) 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 (**DHS6e**) 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 10.3CC Sources of Income Charts (**DHS6d**) indicates that Compensation provided to an individual as an employee is considered earned income when determining Food Stamp eligibility.
- 6) Defendant filed an application December 30, 2005 and was approved for Food Stamp Benefits effective January 9, 2006. (**DHS1**) On this application Defendant checked "Yes" to questions 4 and 42 of the Rights and Responsibilities 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) As part of the application process, Defendant was required to complete a Customer Questionnaire. Question two of the form asks "Is anyone living in the household employed?" Defendant checked this question "No". Defendant signed and dated the form 12/30/05.
- 8) Testimony from the department's representative and case comments dated 03/01/ 06 (**DHS2**) indicates that the agency received an anonymous report that Defendant's husband was employed at [REDACTED] An agency representative contacted the [REDACTED] manager via telephone and verified that _____ was employed there and had been since before Christmas.

- 9) Defendant was contacted by the agency to provide verification of income and provided a statement from _____, Owner of the _____ (DHS3) indicating that _____'s base pay was \$5.50 an hour and that he worked an average of 66 hours per week. The statement also indicates that Mr. _____ earned \$368 in gross wages on April 3, 2006 and \$319.00 in gross wages on April 13, 2006. The statement does not indicate a starting date of employment.
- 10) Testimony received from both the Defendant and Defendant's husband indicates that they were unsure when Mr. _____ began employment at _____. They attempted to secure a statement from the employer indicating the start date of employment for Mr. _____ but were unsuccessful.
- 11) Food Stamp Claim Determination form ESFS5 (DHS4) was completed by Repayment Investigator Teresa Smith. This form shows that the Defendant was issued \$1746 in Food Stamp benefits for the time period January 9, 2006 through April, 2006. When calculating the Defendant's Food Stamp benefits utilizing average wages paid to Mr. _____ for this same time period, the household should have received \$520 in Food Stamp benefits. The resulting overissuance was \$1226.
- 12) The record was left open until November 15, 2006 to give the Defendant the opportunity to provide proof of the start date of employment. Defendant failed to provide any verification or make any contact with the hearing officer concerning the issue.
- 13) The facts presented during this Administrative Disqualification Hearing supports the Department's proposal that Defendant intentionally failed to report accurate information concerning her household income when filing an application for Food Stamp benefits on December 30, 2005. The only credible evidence offered as verification of the start date of employment for Mr. _____ is contained in the case comments of the Defendant's case record. Regardless of the start date of employment, it is clear that the Defendant's husband started working at _____ and the Defendant failed to report this to the agency. It was not until the agency contacted the Defendant regarding the employment, that the employment was acknowledged. As a result of the Defendant's failure to report this income in the household the Defendant received \$1226 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 so that a correct decision can be made on

the household's eligibility. Evidence is clear that Defendant filed an application for Food Stamp benefits on December 2005 indicating that no one in the household was employed. As a result of this application Food Stamp benefits were approved for the household based on the reported SSI income only. The best credible evidence available indicates that Defendant's husband was employed at The Press Club at the time of the application and the Defendant failed to report this income.

- 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 Defendant withheld information regarding her husband's employment resulting in an overissuance of Food Stamp benefits for the time period January 2006 through April 2006 in the amount of \$1226.

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 twelve months disqualification period is to be applied to the Defendant effective January 2007 and collection action initiated for repayment of the \$1226 overissuance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of November 2006.

Melissa Hastings

State Hearing Officer