



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 23, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held October 17, 2006 to determine whether you committed an Intentional Program Violation (IPV).

In arriving at a decision, the State Hearing 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.

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)

Information submitted at the hearing revealed that you were fleeing probation from North Carolina when you applied for Food Stamps in West Virginia in April 2005 and that you failed to report this information to the Department.

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

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Lynn McCourt, Repayment Investigator, DHHR

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

_____,
Defendant,

v.

Action Number: 06-BOR-2721

**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 a hearing concluded on October 23, 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 fair hearing was convened on October 17, 2006.

It should be noted here that the Defendant is not a current recipient of Food Stamp benefits.

All persons giving testimony were placed under oath.

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 an EBT card to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

_____, Defendant (participating telephonically)
Lynn McCourt, State Repayment Investigator, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 from participation in the Food Stamp Program for a period of one (1) year.

V. APPLICABLE POLICY:

7 CFR ' 273.16 USDA Code of Federal Regulations
Common Chapters Manual Chapter 700, Appendix A
West Virginia Income Maintenance Manual Sections 1.2, 9.1A,2g and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Department notifications and correspondence
- D-2 [REDACTED] Department of Corrections information
- D-3 West Virginia Income Maintenance Manual Sections 9.1A, 2g and 20.2
- D-4 Food Stamp Claim Determination information
- D-5 Hearing Summary

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing (D-1) was received by the Board of Review from State Repayment Investigator Lynn McCourt on August 21, 2006. Ms. McCourt contends that the Defendant committed an Intentional Program Violation and recommends that the Defendant be disqualified from participation in the Food Stamp Program for a period of one (1) year.
- 2) The Repayment Investigator testified that the Defendant was added to [REDACTED] Food Stamp Assistance Group on April 1, 2005. At that time, it was not reported that the Defendant was fleeing probation from [REDACTED] A Food Stamp redetermination was completed on August 25, 2005, and a West Virginia Works application was completed for [REDACTED] and the Defendant on February 27, 2006. It remained unreported that the Defendant was fleeing probation.

- 3) Exhibit D-2 includes a memorandum to the Repayment Investigator from [REDACTED] Chief Probation/Parole Officer for [REDACTED] County, [REDACTED]. The memorandum indicates that there is an outstanding Order for Arrest for the Defendant stemming from a probation violation in [REDACTED]. The memo indicates that the offender is not extraditable.

Exhibit D-2 also includes information from the [REDACTED] Department of Corrections Public Access Information System. This information indicates that the Defendant was convicted of a misdemeanor on February 27, 2003 in conjunction with an assault on a female (principal). His sentence was suspended and he was to serve 18 months of probation.

- 4) The Department sent the Defendant a Notification of Intent to Disqualify (D-1). A Food Stamp Claim Determination form (D-4) indicates that failure to report the probation violation resulted in a \$1,692 loss to the Food Stamp Program for the period of April 2005 through May 2006.
- 5) The Defendant testified that he was informed if he left [REDACTED] his probation would be dropped. He stated that he was unaware of the outstanding arrest order.
- 6) West Virginia Income Maintenance Manual Section 9.1A, 2g (D-3) states:

Persons who are excluded by law as found below are ineligible (for Food Stamps) and may not be a separate Assistance Group. The periods of ineligibility are as follows:

Violating a condition of probation or parole which was imposed under federal or state law: ineligible while identified in this category.

- 7) West Virginia Income Maintenance Manual Section 1.2 (E) states that it is the client's responsibility to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 8) West Virginia Income Maintenance Manual Section 20.2:
When an AG (Assistance 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.
- 9) West Virginia Income Maintenance Manual Section 20.2, 2 (D-3) states:
IPVs include making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.

The individual(s) who is found to have committed an IPV is ineligible to participate in the Program for a specified time, depending on the number of offenses committed.

- 10) West Virginia Income Maintenance Manual Section 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: (Section 9.1A, 2g) 1st Offense: 1 year (Disqualification).

- 11) Common Chapters Manual 700, Appendix A, Section B, 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.
- 12) Common Chapters Manual 700, Appendix A, Section G (The Decision) states that the State Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an Intentional Program Violation as defined in Section B of Appendix A.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when an Assistance 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.
- 2) If it is determined that an Intentional Program Violation has been committed, a disqualification penalty is imposed on the Assistance Group. For a first offense, the penalty is one (1) year.
- 3) Policy dictates that individuals who violate probation or parole are ineligible to receive Food Stamps as long as they are identified in this category.
- 4) Evidence reveals the Defendant failed to inform the Department that he was fleeing probation from [REDACTED] while receiving Food Stamps in West Virginia. Therefore, the Hearing Officer finds that the Department's proposal to impose an Intentional Program Violation is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to disqualify the Defendant from the Food Stamp Program for a period of one (1) year based on the commission of an Intentional Program Violation. The disqualification period will begin December 1, 2006.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd Day of October, 2006.

Pamela L. Hinzman
State Hearing Officer