



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 21, 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 June 12, 2006 for benefits from the agency. On this application you listed _____ as living in your home. As a result of this application you received Food Stamp benefits totaling \$ 210 for the months of June 2006 through August 2006. Evidence provided at the hearing held November 1, 2006 revealed that _____ was removed from your home on June 5, 2006 and was not in your household during the months you were certified for Food Stamp benefits for him. As a result, you were issued \$190 in Food Stamp benefits for which you 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

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-2935

_____,
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 mailed to the Defendant on September 28, 2006 via First Class Mail as Defendant was a current recipient of benefits from the agency.

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 1.2E, 1.4L; WV Income Maintenance Manual Section 9.1A2h; 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 06/12/06
- DHS-2 Case comments dated 06/12/06 through 07/27/06
- DHS-3 Court order from the Juvenile Court of [REDACTED] County West Virginia dated June 6, 2006 signed by [REDACTED] Judge.
- DHS-4 Food Stamp Claim Determination form (ESSFS5) indicating dates of issuance as June 12, 2006 through August 31, 2006
- DHS-5 Notification of Intent to Disqualify (IBGR44a) dated August 3, 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 20.2 Food Stamp Claims and Repayment Procedures
- DHS-6e Common Chapters Manual Chapter 700 Appendix A, Section B
- DHS-7 Request for an Administrative Disqualification Hearing (IG-BR-30) dated 09/06/06
- DHS-10 Hearing Summary (IGBR31) dated 10/20/06

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Common Chapters Manual, Chapter 700, Appendix A, Section B, (**DHS6e**) 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) (g,h) Food Stamp Eligibility Determinations Benefits 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 (**DHS6d**) 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.
- 5) Defendant was in the local DHHR Office on June 12, 2006 and completed an application for Food Stamp Benefits (**DHS-1**). Testimony from the department's representative indicates that the Defendant on page 1 (**DHS1**) requested that _____ be included in the household for Food Stamp purposes.
- 6) Testimony from the department's representative indicates that as a result of the June 12, 2006 application, the Defendant was approved for Food Stamp benefits for herself and her son, _____, effective with the date of application.
- 7) Testimony from the department's representative and case comments dated July 20, 2006 (**DHS2**) indicates that a peer review was completed and it was discovered that _____ was listed in another case's household. A follow up was done with Child Protective Services on July 27, 2006 and it was confirmed that _____ was removed from _____'s home on June 5, 2006 and placed with his grandmother.
- 8) A court order from the Juvenile Court of _____ County, West Virginia dated June 5, 2006 and signed by _____ Judge indicates that legal custody of _____ was given to the West Virginia Department of Health and Human Resources and physical custody of _____ placed with the paternal grandmother, _____. (**DHS3**)
- 9) Repayment Investigator, Teresa Smith, prepared Food Stamp Claim Determination form ESFS5 (**DHS4**) indicating that Defendant was issued Food Stamp benefits from June 12, 2006 through August 31, 2006 totaling \$210. When excluding _____ from the household for these same months the household should have received \$20 in Food Stamp benefits. The resulting overissuance was \$190.
- 10) A request for an Administrative Disqualification Hearing (**DHS7**) was received by the Board of Review on September 11, 2006.
- 11) The facts presented during this Administrative Disqualification Hearing supports the Department's proposal, that Defendant intentionally provided false information concerning her household composition during an application filed June 12, 2006. As a

result of the false information provided on these applications the Defendant received \$190 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 when making an application for benefits. Evidence is clear that Defendant filed an application including ____ as a household member when he was in fact removed from her home by Child Protective Services on June 5, 2006 and was not living with the Defendant.
- 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 a first offense.
- 4) There is clear and convincing evidence that Defendant intentionally provided false information concerning her household composition when filing an application for Food Stamp benefits on June 12, 2006 which resulted in Defendant receiving \$190 in Food Stamp benefits for which she was not entitled.

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 \$190 overissuance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of November 2006.

**Melissa Hastings
State Hearing Officer**