



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 14, 2006

Dear Mr. & Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held November 13, 2006.

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.

For the purpose of determining, through an administrative disqualification hearing, whether or not a person has committed an intentional program violation, the following criteria will be used: Intentional program violation shall consist of having (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 regulations, or any statute relating to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamp coupons (Section B. Appendix A Chapter 700 of Common Chapters Manual) Individuals found to have committed an intentional program violation shall be ineligible to participate in the Food Stamp Program for a fixed period of time as explained in section 20.2(c)(2) and 9.1 (A)(2)(g) of the WV Income Maintenance Manual and 7 CFR Section 273.16.

The information which was submitted at your hearing revealed that you committed an intentional program violation of the Food Stamp Program by failing to report receiving Social Security benefits for your daughter, _____, when you applied for Food Stamps on November 29, 2005, causing an overissuance of Food Stamps in the amount of \$444 for the period of November 29, 2005 through April, 2006.

It is the decision of the State Hearings Officer that you committed an Intentional Program Violation of the Food Stamp Program and you will both be individually disqualified from participation in the Food Stamp Program for a period of one (1) year beginning January, 2007.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Debbie Roberts, Repayment Investigator

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

_____ & _____,

Defendant,

v.

Action Number: 06-BOR-3077

**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 November 13, 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. It should be noted that the defendants did not attend the hearing but the hearing was convened in their absence as appointment letters were sent to both by regular mail on October 11, 2006 notifying them of the date, time, and location of the hearing and the defendants had an active Food Stamp case at the time the appointment notices were mailed. It should also be noted that appointment letters were originally mailed on October 3, 2006 but were returned by the postal service as they were mailed to the incorrect address.

II. PROGRAM PURPOSE:

The Program entitled Food Stamp Program 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:

1. Debbie Roberts, Repayment Investigator.

Presiding at the Hearing was Thomas M. Smith, 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 of the Food Stamp Program.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 1.2, 10.3, 10.4, 20.2.
Federal Food Stamp Regulations Sections 273.9, 273.16.
Common Chapters Manual Section 700, Appendix A.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1 Copy of benefit recovery referral.
DHS-2 Copy of WV Income Maintenance Manual Section 1.2.
DHS-3 Copy of Food Stamp Claim determination (12 pages).
DHS-4 Copy of Federal Regulations /Section 273.16 (12 pages).
DHS-5 Copy of case comments 11-09-05.
DHS-6 Copy of application for CHIP Medicaid 10-26-05 (2 pages).
DHS-7 Copy of case comments and verifications 11-16-05 (7 pages).
DHS-8 Copy of case comments 11-29-05.
DHS-9 Copy of combined application/review form 11-29-05 (14 pages).
DHS-10 Copy of rights and responsibilities 11-29-05 (4 pages).
DHS-11 Copy of case comments and verification checklist 11-29-05 (2 pages).
DHS-12 Copy of letter from Mrs. _____ to Mrs. _____ 12-8-05.
DHS-13 Copy of case comments 12-9-05.
DHS-14 Copy of case comments and LIEAP application 12-23-05 (11 pages).
DHS-15 Copy of case comments 12-27-05.
DHS-16 Copy of case comments 1-10-06.
DHS-17 Copy of case comments 4-3-06
DHS-18 Copy of combined application/review form 4-3-06 (16 pages).
DHS-19 Copy of rights and responsibilities 4-3-06 (4 pages).
DHS-20 Copy of representative payee report (2 pages).
DHS-21 Copy of RSDI on-line query and verification from SSA (7 pages).
DHS-22 Copy of WV Income Maintenance Manual Section 2.2 (2 pages).
DHS-23 Copy of WV Income Maintenance Manual Section 20.6.
DHS-24 Copy of notification of intent to disqualify 9-11-06 (3 pages).
DHS-25 Copy of WV Income Maintenance Manual Section 20.1 and 20.2 (7 pages).

VII. FINDINGS OF FACT:

- 1) The Investigations and Fraud Management (IFM) Unit received a referral that the defendants did not report that their daughter, _____, was receiving Social Security benefits (Exhibit #DHS-1) causing an overissuance of Food Stamps in the amount of \$444 for the period of November 29, 2005 through April, 2006 (Exhibit #DHS-3).
- 2) The defendants were in the local office on 11-29-05 to apply for Food Stamps and reported the only household income as Mr. _____'s VA of \$502 per month and reported _____ as a member of the household with no income (Exhibits #DHS-8 & #DHS-9).
- 3) Mr. _____ had completed a CHIP Medicaid application on 10-26-05 which reported _____ as a household member with no income (Exhibit #DHS-6).
- 4) RSDI computer printout dated 9-21-06 showed _____'s address as _____ WV _____ which is the same address as the defendants and Inter-Agency Referral form from the Social Security Administration dated 6-26-06 shows the same address for _____ and verified receipt of Social Security benefits for each month of the overissuance period (November 29, 2005 through March, 2006 (Exhibit #DHS-21).
- 5) Mr. _____ was in the local office on 12-9-05 (Exhibit #DHS-13) and 12-27-05 (Exhibit #DHS-15) but did not report the receipt of Social Security benefits for _____.
- 6) LIEAP application completed 12-5-05 by in-ROADS shows _____ as a household member with no income listed and is signed by Mrs. _____ on 12-7-05 (Exhibit #DHS-14).
- 7) Mrs. _____ phoned the local office on 1-10-06 but did not report the receipt of Social Security benefits for _____ (Exhibit #DHS-16).
- 8) The defendants completed an application/review form on 11-29-05 and signed the rights and responsibilities acknowledging their understanding of reporting requirements and the penalties for Intentional Program Violation (Exhibits #DHS-8 and #DHS-9).
- 9) Ms. Roberts requested that a one year disqualification period be imposed on the defendants due to intentional program violation of the Food Stamp Program.
- 10) 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.

- 11) WV Income Maintenance Manual Section 20.2, C, 2 states that once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV. See Section 9.1, A, 2, g.
- 12) WV Income Maintenance Manual Section 9.1, A, 2, g states that persons who have been found guilty of an IPV are ineligible as follows: 1st offense: 1 year, 2nd offense: 2 years, 3rd offense: permanent.

VIII. CONCLUSIONS OF LAW:

Common Chapters Section 700, Appendix A defines an intentional program violation as having intentionally made a false statement or concealed or withheld facts. The evidence and testimony show that the defendants failed to report during an office visit on 11-29-05 that their daughter, _____, was receiving Social Security benefits. The defendants withheld and concealed the fact that _____ was receiving Social Security benefits during the office visit on 11-29-05 and failed to report the income during other contacts with the local office on 12-9-05, 12-27-05, and 1-10-06. In addition, the Social Security income was not reported on a LIEAP application submitted on 12-5-05. The evidence and testimony show that the action of the defendants was intentional and the defendants committed an intentional program violation which caused a Food Stamp overissuance of \$444 for the period of November 29, 2005 through April, 2006.

IX. DECISION:

It is the decision of the State Hearing Officer that the defendants committed an intentional program violation of the Food Stamp Program and they will both be individually disqualified from participation in the Food Stamp Program for a period of one (1) year beginning January, 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of November, 2006.

Thomas M. Smith
State Hearing Officer