



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 29, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 28, 2006, 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 intentionally withheld reporting that your child moved in with his father in June 2005. This resulted in an over issuance of Food Stamp Benefits in the amount of \$363.00 for the period covering January 2006 through March 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,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Mrs. Debbie Roberts, Repayment Investigator

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

_____,
Defendant,

v.

Action Number: 06-BOR-3176

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

Respondent.

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 29, 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 Administrative Disqualification Hearing was scheduled for November 28, 2006 on a timely appeal filed October 24, 2006. The Scheduling Notice, Request for an Administrative Disqualification Hearing, and Waiver of Administrative Disqualification Hearing forms were mailed to the Defendant via First Class Mail on October 24, 2006.

The issue in this particular matter involves the Defendant, _____, intentionally withholding facts about reporting that her son moved in with his father in June 2005. This allegedly resulted in an over issuance of Food Stamp Benefits in the amount of \$363.00. The Department is seeking a ruling of Intentional Program Violation; Disqualification from the Food Stamp Program for a period of one (1) year; and Repayment of the over issued Food Stamp Benefits.

It should be noted here that, the Defendant was receiving Food Stamp Benefits at the time of the hearing. The Scheduling Notice was not returned, and the Defendant did not attend the scheduled 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:

Debbie Roberts, Repayment Investigator

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., 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 Sections 1.2 E Client Responsibility; 2.2 Timely Reporting; 20.6 Welfare Misrepresentation; 20.2 Food Stamp Claims and Repayment Procedures; Common Chapters Manual, Chapter 700, Appendix A, Section B; and 7 CFR 273.16 Intentional Program Violation (IPV)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1	Report on Food Stamp Error dated 06/29/06
DHS-2	WVIMM Section 1.2 E Client Responsibility Food Stamp Calculation Sheet
DHS-3	Food Stamp Claim Determination
DHS-4	7CFR273.16
DHS-5	Rights and Responsibilities dated 12/17/04
DHS-6	Case Comments dated 08/23/05
DHS-7	Case Comments dated 11/21/05
DHS-8	Case Comments dated 12/01/05
DHS-9	Application dated 12/01/05
DHS-10	Rights and Responsibilities dated 12/01/05
DHS-11	WVIMM Section 2.2 B Reporting Requirements
DHS-12	WVIMM Section 20.6 A Definition of Welfare Fraud
DHS-13	Notification of Intent to Disqualify dated 09/26/06
DHS-14	WVIMM Section 20.2 Food Stamp Claims and Repayment Procedures

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1. The Investigation and Fraud Management Unit received a referral that the case was over issued Food Stamps due to the Defendant's son moving in with his father in June 2005 (DHS- 1).
2. West Virginia Income Maintenance Manual Chapter 1.2 E states in part (DHS-2):

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. When the client is not able to provide the required verification, the Worker must assist him. The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions: (1) Denial of the application; (2) Closure of the active AG; (3) Removal of the individual from the AG; Repayment of benefit; and Reduction in benefits
3. By intentionally failing to report the Defendant's son was not in the home, Food Stamps were over issued for the period covering January 2006 through March 2006 in the amount of \$363.00 (DHS-3).
4. Because of the nature of the claim, it has been pursued as an Intentional Program Violation (IPV). The Code of Federal Regulations, Sec. 273.16(c) states, "An IPV consists 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 or ATPs." (DHS-4).
5. The Rights and Responsibilities were signed by the Defendant on December 1, 2004 (DHS-5).
6. The Case Comments on August 23, 2005 indicate a School Clothing Allowance application was received August 22, 2005 and dated August 15, 2005. The application was denied since the SCA season was over July 31, 2005. The Defendant reported a three person household, and the children receiving child support. The Department requested verification of the Defendant's earned income for the period covering July 22, 2005 through August 22, 2005 (DHS-6).
7. The Case Comments on November 21, 2005 indicate the Defendant called to reschedule the food stamp review she missed. It was rescheduled for December 1, 2005 (DHS-7).
8. The Case Comments on December 1, 2005 indicate the Defendant completed her food stamp review, and turned in a CHIP (Children's Medicaid) review form (DHS-8).
9. The application dated December 1, 2005 reports a three person household that includes the Defendant and two children. The Defendant signed the application asserting all was complete and truthful (DHS-9).

10. The Defendant signed the Rights and Responsibilities section of the application dated December 1, 2005 and accepted responsibility for its contents (DHS-10).

11. West Virginia Income Maintenance Manual Chapter 2.2 B, 3 Timely Reporting & Follow-up (DHS-11) states in part:

To determine if a claim must be established or lost benefits restored, a decision must be made as to whether or not a change was reported in a timely manner. When the client does not report in a timely manner and the change could have been made, a claim may be established. Benefits are not restored when the change which would have increased benefits is not reported within the AG's appropriate time limit.

12. West Virginia Income Maintenance Manual Chapter 20.6A (DHS-12) states in part:

Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient in obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device.

The important elements constituting an offense under this statute are that any false representation was willfully made or that any other device to obtain assistance was a misrepresentation.

Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false.

13. The Notification of Intent to Disqualify and Waiver of Administrative Disqualification Hearing forms were mailed to the Defendant on September 26, 2006 and October 24, 2006, respectively. The Defendant did not respond (DHS-13).

14. The Repayment Investigator recommended a ruling of Intentional Program Violation, twelve month Food Stamp sanction, and repayment of the over issued Food Stamp benefits. The recommendation was based on the Defendant's receipt of Food Stamp benefits since 1989, and having signed several applications and rights and responsibilities.

15. The request for sanction and repayment are in compliance with the Code Federal Regulations (CFR) section 273.16, and West Virginia Income Maintenance Manual Chapter 20.2 which states in part:

When an AG has been issued more food stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the coupon entitlement of the AG & the coupon allotment the AG was entitled to receive.

16. West Virginia Income Maintenance Manual Chapter 20.2 C (2) states in part (DHS-14):

The individual 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.

- 17.** West Virginia Income Maintenance Manual Chapter 20.2 E (3) (a & b) Collection Procedures states in part (DHS-14):

A. Offsetting Lost Benefits – A claim, whether UPV or IPV, must be collected by offsetting when lost benefits are owed to the Assistance Group, but have not yet been restored.

B. Treasury Offset - Claims which have a balance of at least \$25, are delinquent and are not over 10 years old are subject to referral for collection of the claim by offset of the client's federal income tax refund and any federal benefits/payments.

- 18.** West Virginia Income Maintenance Manual Chapter 20.2 (F) (2) (a) – Current Recipients states in part (DHS-14):

Current coupon entitlement after the disqualified member(s) have been removed from the AG is reduced 20% of the entitlement or \$20 whichever is greater. The reduction is based on the entitlement amount prior to the removal of the disqualified member.

- 19.** 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.

VIII. CONCLUSIONS OF LAW:

- 1)** 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.
- 2)** The evidence clearly indicates the Defendant intentionally withheld reporting her son had moved into the father's home in June 2005. This resulted in an over issuance of Food Stamp Benefits in the amount of \$363.00 for the period covering January 2006 through March 2006.

IX. DECISION:

It is the decision of this State Hearing Officer that the Defendant committed an Intentional Program Violation. She will be sanctioned from the Food Stamp Program for a period of 12 months effective January 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of November 2006.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer