



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

December 5, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 30, 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 February 28, 2006 for benefits from the agency. On this application the only household income reported was your Social Security Disability. Persons included on the application were you, _____ and _____. As a result of this application you received Food Stamp benefits totaling \$926 for the months of February 2006 through June 2006. Evidence provided at the hearing held November 30, 2006 revealed that the [REDACTED] also known as [REDACTED] paid you and _____ \$4825 in wages from February 2006 through June 2006 for providing a karaoke service. By failing to report this income, your household received \$926 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-3185

_____,
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 30, 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. Notification of the November 30, 2006 hearing was mailed to the Defendant on October 26, 2006 via First Class Mail as Defendant is 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 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 Food Stamps dated and signed by Defendant on 02/28/06
- DHS-2 Application for Medicaid and Food Stamps dated and signed by Defendant 07/13/06
- DHS-3 Case Comments dated 03/01/06 through 07/27/06 consisting of 4 pages
- DHS-4 Letter dated July 18, 2006 to _____ with response from Mr. _____ dated August 5, 2006 and attached verification of wages paid from February 2006 through June 2006 to _____
- DHS-5 Food Stamp Claim Determination form (ESSFS5) indicating dates of issuance as February 2006 through June 2006.
- DHS-6 Notification of Intent to Disqualify (IBGR44a) dated September 20, 2006 with Waiver of Administrative Disqualification Hearing (IGBR44) attached.
- DHS-7a WV Income Maintenance Manual Section 1.2 Client Responsibility
- DHS-7b WV Income Maintenance Manual Section 1.4L Repayment and Penalties
- DHS-7c WV Income Maintenance Manual Section 9.1g and h Food Stamp Eligibility Determination Groups
- DHS-7d WV Income Maintenance Manual Section 10.3 Chart of Income Sources
- DHS-7e WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures
- DHS-7f Common Chapters Manual Chapter 700 Appendix A, Section B
- DHS-8 Request for an Administrative Disqualification Hearing (IG-BR-30) dated 10/24/06
- DHS-9 Hearing Summary (IGBR31) dated 11/20/06

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Common Chapters Manual, Chapter 700, Appendix A, Section B (**DHS7f**), 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 (**DHS7c**) 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 (**DHS7a**) 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 (**DHS7e**) 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 (**DHS7d**) indicates that Self Employment is considered earned income when determining Food Stamp eligibility.
- 6) Defendant filed an application for Food Stamp Benefits on February 28, 2006 (**DHS1**). On this application the 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) On the date of application the Defendant also completed a Quality Questionnaire. On this questionnaire the Defendant reported that he had SSI income that he received on the third of each month. This was the only income reported. Page 8 of the Food Stamp

application **(DHS1)** indicates that _____ receives \$710 in SS Disability per month. There is no other income indicated on the application.

- 8) Case comments dated March 1, 2006 **(DHS3)** indicates that the only income reported to the worker at the time of application was Defendant's Social Security Disability. The two other household members were reported to be unemployed and registration for the Bureau of Employment Programs was completed by them.
- 9) Testimony from the department's representative indicates that an anonymous complaint was received by the department that Defendant and _____ were working at _____ doing karaoke. As a result of this complaint a letter dated July 18, 2006 was sent _____ - the owner of the business to verify this complaint. A response was received from Mr. _____ dated August 5, 2006 verifying the employment of Defendant and _____ as subcontractors providing karaoke services. Verification of wages paid to Defendant and _____ were completed by _____, bookkeeper for _____. **(DHS4)** Wages paid were as follows:

Date Paid	Gross Wage
02/06	\$ 900.00
03/06	\$1000.00
04/06	\$1025.00
05/06	\$ 900.00
06/06	\$1000.00

- 10) Repayment Investigator, Teresa Smith, prepared Food Stamp Claim Determination forms ESFS5 **(DHS5)** indicating that Defendant was issued Food Stamp benefits from February 2006 through June 2006 totaling \$926. When calculating the household's eligibility including the self employment income from _____ the household would have been ineligible for Food Stamp benefits. The resulting overissuance was \$926.
- 11) A Notification of Intent to Disqualify IGBR44a **(DHS6)** was sent to Defendant on September 20, 2006 along with a Waiver of Administrative Disqualification Hearing IGBR44. Testimony received from the department's representative indicates that no response was received from the Defendant.
- 12) A request for an Administrative Disqualification Hearing **(DHS8)** was received by the Board of Review on October 26, 2006.
- 13) The facts presented during this Administrative Disqualification Hearing supports the Department's proposal, that Defendant intentionally failed to report accurate information concerning his household income during an application filed February 28, 2006. As a result of the Defendant's failure to report accurate information on this application, the Defendant received \$926 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 and completed a quality questionnaire for Food Stamp benefits in which he intentionally withheld information concerning the receipt of wages from [REDACTED] for providing karaoke services.
- 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 Defendant intentionally provided false information concerning his household income when filing an application for Food Stamp benefits which resulted in Defendant receiving \$926 in Food Stamp benefits for which he 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 \$926 overissuance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of December, 2006

Melissa Hastings
State Hearing Officer