



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 12, 2006

Dear Mrs. _____:

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: Applications were filed for benefits from the agency by you on March 8, 2005; June 16, 2005; January 12, 2006 and March 31, 2006. On these applications you indicated that no one in the household had been convicted of any drug felony involving possession, use or distribution of a controlled substance. As a result of these applications the household received Food Stamp benefits totaling \$3106 for the months of March 2005 through August 2006. Evidence provided at the hearing held November 30, 2006 revealed that the State of [REDACTED] has on file four convictions for you for possession of cocaine. By failing to report these drug felony convictions, you received Food Stamp benefits for which you were not entitled. Evidence provided by you concerning your household composition and income during this same time period indicates that the agency's calculation of your Food Stamp overissuance was incorrect and is ordered to be modified based upon the #6 Findings of Fact within the attached decision.

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

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-3187

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 Certified Restricted Mail. An acknowledgment of receipt of the scheduling notice was signed by Defendant on October 31, 2006.

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:

_____, Defendant
_____, Defendant's husband
_____, Defendant's infant son
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 9.1A2g & h; WV Income Maintenance Manual Section 10.3; WV Income Maintenance Manual Section 10.4; 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-1a	Application for Medical Assistance and Food Stamps with Rights and Responsibilities dated and signed by Defendant on 03/08/05
DHS-1b	Application for Medical Assistance and Food Stamps with Rights and Responsibilities dated and signed by Defendant on 06/16/05
DHS-1c	Application for Medical Assistance and Food Stamps with Rights and Responsibilities dated and signed by Defendant on 01/12/06
DHS-1d	Application for Medical Assistance and Food Stamps with Rights and Responsibilities dated and signed by Defendant on 03/31/06
DHS-2	State of West Virginia Department of Health and Human Resources Client Contact Report dated 08/24/2005 through 07/24/2006 consisting of 24 pages
DHS-3	Criminal Records report from the State of _____ for _____ consisting of 12 pages
DHS-4	WV State Online Query of RSDI Information consisting of 4 pages.
DHS-5a	Food Stamp Claim Determination Form (ESFS5) for the time period March 2005 through October 2005.
DHS-5b	Food Stamp Claim Determination Form (ESFS5) for the time period January 2006 through August 2006
DHS-6	Notification of Intent to Disqualify (IBGR44a) dated September 19, 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 9.1 g 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 10.4 Food Stamp Program Income
DHS-7f	WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures
DHS-7g	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 11/22/06

Claimants' Exhibits:

C-1	Letter dated December 4, 2006 from the Social Security Administration concerning benefits paid to _____ for _____
C-2	Letter dated December 4, 2006 from the Social Security Administration concerning benefits paid to _____ for _____

VII. FINDINGS OF FACT:

- 1) Common Chapters Manual, Chapter 700, Appendix A, Section B (**DHS7g**), 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) (h) 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 9.1 (A) (2) (g) Individuals Excluded by Law (**DHS7c**) indicates that persons convicted of a felony offense which involved possession, use or distribution of a controlled substance as defined by section 102 (6) of the Controlled Substance Act will be excluded from participation in the Food Stamp Program permanently.
- 4) 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.
- 5) WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures (**DHS7f**) 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.
- 6) WV Income Maintenance Manual Section 10.3MMM Sources of Income Charts (**DHS7d**) indicates that Social Security is considered unearned income when determining Food Stamp eligibility.
- 7) _____ filed applications for Food Stamp Benefits on March 8, 2005; June 16, 2005; January 12, 2006 and March 31, 2006 (**DHS4a, b, c and d**). On all of these applications 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.

- 8) On each of these applications the Defendant responded "No" to the question

Has anyone in your household been convicted of a drug felony for possession, use or distribution of a controlled substance committed on or after 08/23/96?

- 9) Documentary evidence received from the State of New Jersey (**DHS3**) indicates that _____ entered guilty pleas on June 25, 2000; April 16, 2001 and August 5, 2002 for possession of cocaine.
- 10) Repayment Investigator, Teresa Smith, prepared Food Stamp Claim Determination form ESFS5 (**DHS5a**) indicating that the Defendant was issued Food Stamp benefits from March 2005 through October 2005 totaling \$1941. When recalculating the household's eligibility, Ms. Smith determined that Defendant was not eligible to be included in the budget group for this time period. Ms. Smith also included Defendant's husband in the budget group and added his Social Security income to the household income. In addition, Ms. Smith added Social Security income for Defendant's son who was included in the budget group. Based on this information a determination was made that the household was ineligible for all Food Stamp benefits received for the time period.
- 11) Repayment Investigator, Teresa Smith, prepared Food Stamp Claim Determination form ESFS5 (**DHS5b**) indicating that the Defendant was issued Food Stamp benefits from January 2006 through August 2006 totaling \$1165. When recalculating the household's eligibility, Ms. Smith determined that Defendant was not eligible to be included in the budget group for this time period. Ms. Smith added Social Security income for Defendant's son who was included in the budget group to the other reported household income. Based on this information a determination was made that the household was ineligible for all Food Stamp benefits received for the time period.
- 12) Uncontested testimony provided by the Defendant and her husband indicate that the department's inclusion of Defendant's husband in the budget group for the time period of March 2005 through October 2005 was incorrect. Both the Defendant's and her husband's testimony indicate that the Defendant's husband was not living with Defendant during this time period.
- 13) Information provided by the Social Security Administration letters dated December 4, 2006 (**C1 and C2**) are clear and convincing evidence that Defendant's husband did not become the payee for his son _____'s Social Security benefits until May 2006. It also shows that Defendant's husband did not become payee for his son Aaron's Social Security benefits until June 2006.
- 14) Notifications of Intent to Disqualify IGBR44a (**DHS6**) was sent to the Defendant on September 19, 2006 along with a Waiver of Administrative Disqualification Hearing IGBR44.
- 15) A request for an Administrative Disqualification Hearing (**DHS8**) was received by the Board of Review on October 26, 2006.
- 16) Testimony received from Defendant indicates that she did not report her drug convictions when applying for benefits in West Virginia because the convictions were from the State of [REDACTED]. She came to West Virginia to "start over" after freeing herself from drug addiction.
- 17) The facts presented during this Administrative Disqualification Hearing supports the Department's proposal, that the Defendant failed to report accurate information concerning her drug felony convictions during Food Stamp applications filed March 8, 2005; June 16, 2006; January 12, 2005 and March 31, 2006. The Defendant's reasoning that her drug conviction in [REDACTED] would not follow her to West Virginia would seem to be reasonable if the question asked of her during the interview for Food Stamp benefits was specific to West Virginia. The question asked of the Defendant during her Food Stamp application interviews was:

Has anyone in your household been convicted of a drug felony for possession, use or distribution of a controlled substance committed on or after 08/23/96?

Based on the Defendant's conviction record, the only reasonable answer one could expect the Defendant to give to that question would be "Yes". As a result of the Defendant's failure to report accurate information on these applications, the Defendant received 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 multiple applications for Food Stamp benefits and failed to disclose her conviction for drug possession in New Jersey.
- 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) WV Income Maintenance Manual Section 9.1 g indicates that persons convicted of a felony offense which occurred on or after 8/23/96 which involved possession, use or distribution of a controlled substance are permanently ineligible for the Food Stamp Program. While the conviction record from the State of New Jersey does not spell out the nature of the conviction, it is clear that the convictions in question were third degree in nature and are punishable by a sentence of up to four years of confinement. The Common Law definition of a felony is any crime punishable by a year or more confinement therefore it can be determined that the Defendant's convictions were felonies.
- 5) There is clear and convincing evidence that the Defendant intentionally provided false information concerning her drug felony status when filing applications for Food Stamp benefits which resulted in the Defendant receiving Food Stamp benefits for which she was not entitled.
- 6) Evidence is clear that the calculation of overissuance completed by the agency is inaccurate. The inclusion of Defendant's husband and his income during the time period of July 2005 through October 2005 is not supported by the evidence. Also the inclusion of \$376 in Social Security income for Defendant's son _____ during the time period of July 2005 through April 2006 is not supported by evidence. The Food Stamp overissuance is to be recalculated by the agency excluding the Defendant's husband and his income for the time period of July 2005 through October 2005. The Food Stamp overissuance is also to be recalculated by the agency counting no income for _____ for the time period of July 2005 through April 2006. The Defendant is to receive notification concerning the new amount of the overissuance.

IX. DECISION:

It is the decision of the State Hearing Officer to **UPHOLD** the Department's **PROPOSAL** that the Defendant committed an Intentional Program Violation. A twelve months disqualification period is to be applied to the Defendant effective January 2007. Any collection action on the overissuance is to be suspended until the recalculation of the corrected benefits are completed by the agency based on #6 Findings of Fact and Defendant given proper notification of the corrected amount of overissuance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of December, 2006

**Melissa Hastings
State Hearing Officer**