



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 7, 2006

Dear Ms. _____:

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 were approved for Food Stamp benefits effective September 2004 from the State of West Virginia. In December 2004 you filed and were approved for Food Stamp benefits in the State of [REDACTED] while still receiving Food Stamp benefits in the State of West Virginia. In April 2005 and again in November 2005 you completed reviews of your eligibility for Food Stamp benefits in the State of West Virginia and failed to report that you were receiving Food Stamp benefits from the State of [REDACTED]. Due to your failure to report your accurate household circumstances you received Food Stamp benefits simultaneously from the State of West Virginia and the State of [REDACTED] for the time period January 2005 through November 2005 which resulted in an overissuance of \$1510.

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 one hundred twenty (120) 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-3188

_____,
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 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 30, 2006 hearing was mailed to the Defendant on October 26, 2006 via Certified Restricted Delivery. An acknowledgment of delivery was signed by Defendant on October 27, 2006.

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 8.6; 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-1a	Application for Food Stamps dated and signed by Defendant on 09/21/04
DHS-1b	Application for Food Stamps dated and signed by Defendant on 04/29/05
DHS-1c	Application for Food Stamps dated and signed by Defendant on 09/27/05
DHS-2a	Case Comments dated 09/21/04 through 09/29/05 from the State of West Virginia consisting of 7 pages
DHS-2b	Case Comments dated 12/10/04 through 12/29/05 from the State of [REDACTED] consisting of 16 pages
DHS-3a	Food Stamp issuance history for 02/02/04 through 05/08/06 from the State of West Virginia consisting of 2 pages
DHS-3b	Food Stamp issuance history for 01/01/05 through 12/12/05 from the State of [REDACTED] consisting of 3 pages
DHS-3c	Cash issuance history for 05/13/05 through 12/01/05 from the State of [REDACTED] consisting of two pages
DHS-4a	Food Stamp Claim Determination form (ESFS5) indicating dates of issuance as January 2005 through March 2005
DHS-4b	Food Stamp Claim Determination form (ESSFS5) indicating dates of issuance as April 2005 through November 2005.
DHS-5	Notification of Intent to Disqualify (IBGR44a) dated August 4, 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 8.6 Non Duplication of Benefits
DHS-6d	WV Income Maintenance Manual Section 9.1g and h Food Stamp Eligibility Determination Groups
DHS-6e	WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures
DHS-6f	Common Chapters Manual Chapter 700 Appendix A, Section B
DHS-8	Request for an Administrative Disqualification Hearing (IG-BR-30) dated 10/24/06

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Common Chapters Manual, Chapter 700, Appendix A, Section B (**DHS6f**), 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 (**DHS6d**) 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 (**DHS6e**) 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 8.6 Non Duplication of Benefits (**DHS6c**) indicates that a client may not receive Food Stamp benefits concurrently in more than one state. An individual, who has made a fraudulent statement or representation about his /her identity or **place of residence** in order to receive multiple Food Stamp benefits simultaneously, is ineligible to receive Food Stamp benefits for a 10-year period.
- 6) Defendant filed applications for Food Stamp Benefits on September 21, 2004; April 29, 2005; and September 27, 2005 (**DHS1a,b,c**). On these applications the Defendant checked "Yes" to questions 4, 8 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 or any member of my household:

- C) **makes a false statement or misrepresentation of identity and/or residence to receive duplicate benefits at the same time, then the responsible party will be disqualified for 10 years.**

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) Evidence and testimony received from the department's representative indicates that Defendant filed and was approved for Food Stamp benefits from the State of West Virginia on 09/21/04. **(DHS1a)** Defendant subsequently completed reapplications/reviews of her eligibility for Food Stamp benefits from the State of West Virginia on 04/29/05 **(DHS1b)** and 09/27/05 **(DHS1c)**
- 8) Case comments dated 12/10/04 **(DHS2b)** indicate that the Defendant applied for Food Stamp benefits from the State of [REDACTED] on 12/09/04 claiming to be a victim of domestic violence and was disabled. She was approved for these benefits and based on Food Stamp issuance history from the State of [REDACTED] **(DHS3b)**; Defendant received benefits from 01/05 through 12/05. During this issuance period case comments from the State of [REDACTED] indicate that mail was returned to their offices indicating a West Virginia address. When confronted with this information, Defendant claimed to be living at a Domestic Violence Shelter and this was confirmed by shelter officials.
- 9) Case comments dated 05/04/05 **(DHS2a)** indicate that the Defendant came in for a review of her Food Stamp case in the State of West Virginia on 04/29/05. Page 4 of the review form completed on 04/29/05 **(DHS1b)** indicates that Defendant responded "No" to the question "Has this person received Food Stamps from another State?" Rights and responsibilities were signed by the Defendant for this review form acknowledging her responsibility to report full and accurate information. Defendant indicated on this application that she was living with her mother in West Virginia and caring for her mother's children.
- 10) Case comments dated 09/27/05 **(DHS2a)** indicate that the Defendant came in for a review of her Food Stamp case in the State of West Virginia on 09/21/04. Page 4 of the review form completed on 09/21/04 **(DHS1c)** indicates that Defendant responded "No" to the question "Has this person received Food Stamps from another State?" Rights and responsibilities were signed by the Defendant for this review form acknowledging her responsibility to report full and accurate information. Defendant indicated on this application that she was living with her mother in West Virginia and caring for her mother's children.
- 11) Issuances histories from the State of West Virginia's and [REDACTED] computerized systems **(DHS3a & b)** show that Food Stamp benefits were issued simultaneously to the Defendant for the months of January 2005 through November 2005.
- 12) Repayment Investigator, Teresa Smith, prepared Food Stamp Claim Determination forms ESFS5 **(DHS4a & b)** indicating that Defendant was issued Food Stamp benefits from January 2005 through March 2005 totaling \$447 and April 2005 through

November 2005 totaling \$1063. The total Food Stamps issued for the time period January 2005 through November 2005 was \$1510.

- 13) A Notification of Intent to Disqualify IGBR44a (**DHS5**) was sent to Defendant on August 4, 2006 with a Waiver of Administrative Disqualification Hearing IGBR44. Testimony received from the department's representative indicates no response was received from the Defendant.
- 14) A request for an Administrative Disqualification Hearing (**DHS7**) was received by the Board of Review on October 26, 2006.
- 15) The facts presented during this Administrative Disqualification Hearing supports the Department's proposal that the Defendant intentionally failed to report accurate information concerning her residency which resulted in her receiving benefits simultaneously from the State of West Virginia and [REDACTED]. Evidence is clear that during the months January 2005 through November 2005 the Defendant was residing in the State of [REDACTED] in a domestic violence center. Evidence is also clear that the Defendant filed applications and reapplications in which she gave false information to the State of West Virginia concerning her state of residence and her receipt of Food Stamp benefits from the State of [REDACTED].

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 the Defendant completed reviews of her Food Stamp eligibility in April and September 2005 in which she failed to report her receipt of Food Stamp benefits from the State of [REDACTED] and her residency in a Domestic Violence Shelter in [REDACTED]. Both of these review forms clearly show that Defendant provided the State of West Virginia with a totally different set of facts concerning her living situation than she gave to the State of [REDACTED].
- 3) WV Income Maintenance Manual Sections 9.1 and 20.2 indicates that individuals 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. WV Income Maintenance Manual Section 8.6 indicates that individuals found to have made a false statement or representation about their residence in order to receive Food Stamp benefits simultaneously will be ineligible to receive Food Stamp benefits for a 10-year period.

- 4) There is clear and convincing evidence that Defendant intentionally provided false information concerning her residency when filing reapplications for Food Stamp benefits in April and September 2005. As a result of her failure to report to the State of West Virginia her change in residence in December 2004 and her subsequent filing of reapplications for Food Stamp benefits in the State of West Virginia in April 2005 and again in September 2005, the Defendant received Food Stamp benefits simultaneously from both the State of West Virginia and the State of Ohio. These simultaneous benefits were issued from January 2005 through November 2005.
- 5) There is clear and convincing evidence that the Defendant was residing in the State of [REDACTED] during the period of time that simultaneous benefits were issued. As a result the Food Stamp benefits issued to the Defendant from the State of West Virginia are determined to be overissued and subject to repayment.

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 one hundred twenty (120) months, ten (10) year disqualification period is to be applied to the Defendant effective January 2007 and collection action initiated for repayment of the \$1510 overissuance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 7th Day of December, 2006

Melissa Hastings
State Hearing Officer