



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 3, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held September 13, 2005.

In arriving at a decision, the State Hearing 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(D)(2)(e) of the WV Income Maintenance Manual and 7 CFR Section 273.16

The information which was submitted at your hearing revealed that you did not report the receipt of unearned income from UCI.

It is the decision of the State Hearing Officer that you did commit and intended to commit an Intentional Program Violation. You will be disqualified from the Food Stamp Program for twelve months beginning February 1, 2006.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Edward Eye, Repayment Investigator

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

_____,

Defendant,

v.

Action Number: 05-BOR-5794

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

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an administrative hearing concluded on September 13, 1995 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 here that the claimant's benefits have been continued pending a hearing decision.

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 food coupons to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

Edward Eye, Repayment Investigator

It should be noted that the defendant, _____, did not appear for the hearing after being given proper and timely notification.

Presiding at the Hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether it was shown by clear and convincing evidence that the defendant, _____, committed and intended to commit an Intentional Program Violation.

V. APPLICABLE POLICY:

Common Chapters Manual, Chapter 700, Appendix A, Section B
Section 1.2 and 20.2 of the West Virginia Income Maintenance Manual
7 CFR ' 273.16
7 CFR ' 273.16 (e) (6)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Article 273.16c of the Federal Register defining an IPV
- D-2 Food Stamp Application and (#3a) Rights & Responsibilities dated 02/17/04
- D-3 Case Comments dated 08/18/04
- D-4 Section 1.2E of the West Virginia Income Maintenance Manual
- D-5 Unemployment Benefit Payment History
- D-6 Benefit Recovery Referral dated 08/24/04
- D-7 Section 2.2 of the West Virginia Income Maintenance Manual
- D-8 Food Stamp Claim Determination Forms
- D-9 Copies of Notification of Intent to Disqualify and Waiver
- D-10 Appointment Letter dated 02/03/05
- D-11 Section 20.2 of the West Virginia Income Maintenance Manual
- D-12 ADH Summary

VII. FINDINGS OF FACT:

- 1) A repayment referral was made for _____ on 08/24/04. Referral Period: 05/01/04 thru 08/31/04. Comments: Client failed to report she started receiving Unemployment of \$286 bi-weekly in 04/04. (D-6)
- 2) Case comments dated 08/18/04 read in part that "checked DXRL for caseload and found out that _____ had been receiving unemployment of \$143 per week since 04/30/04. I called her and asked her if she was still receiving it and she said yes, but she was going to call and have it stopped. I said you knew you were supposed to report this, correct and

she answered yes. I asked then why didn't you report it? And she said she was just trying to get caught up on some of her bills." (D-3)

- 3) The defendant completed a food stamp application 02/17/04. She signed the application 02/17/04. She also signed the Rights & Responsibilities section of the application 02/17/04. Under #33 the defendant agreed to let the local Department of Health and Human Resources office know within 10 days if (C) there are any changes in my household's amount of unearned income or gross monthly income. The defendant signed the Rights & Responsibilities and by doing so (#47) certified all statements on the form had been read by her or to her and that she understood them and accepted these responsibilities. (D-2 and D-2a)
- 4) The UCI benefit history shows the defendant was receiving \$143.00 weekly with the first check issued 04/30/04. The last check issued on the printout is dated 08/15/04. (D-5)
- 5) A claim has been established in the amount of \$639.00. (D-8) This is the result of the defendant not reporting the receipt of UCI timely. The defendant was aware of her responsibility to report changes.
- 6) Section 1.2E of the West Virginia Income Maintenance Manual reads in part that it is the client's responsibility to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility..... (D-4)
- 7) Common Chapters Manual, Chapter 700, Appendix A, Section B, reads in part:

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.
- 8) Section 20.2 of the West Virginia Income Maintenance Manual reads 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 entitlement the AG received and the entitlement the AG should have received.
- 9) 7 CFR ' 273.16 (c) Definition of Intentional Program Violation

Intentional Program violations shall consist 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 for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

- 10) 7 CFR ' 273.16 (e) (6) Criteria for determining Intentional Program Violation.

The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, Intentional Program Violation as defined in paragraph (c) of this section.

VIII. CONCLUSIONS OF LAW:

- 1) Intentional Program violations shall consist of having intentionally made a false or misleading statement or misrepresented, concealed or withheld facts.
- 2) The defendant was a recipient of food stamps and was aware of her responsibility to report changes of income in the household.
- 3) The un-refuted case comments dated 08/18/04 show the claimant did not report the receipt of UCI because she needed to get caught up on her bills.
- 4) This demonstrates clear and convincing evidence that the defendant committed and intended to commit an intentional program violation.
- 5) The household received an over issuance of food stamps as a result of the change not being reported.

IX. DECISION:

It is the finding of the State Hearing Officer that the defendant did commit and intended to commit an Intentional Program Violation. The defendant will be disqualified for twelve months beginning February 1, 2006. Repayment will be initiated as policy dictates.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd Day of January, 2006.

**Margaret M. Mann
State Hearing Officer**