



**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 11, 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 failed to report the father of your child was residing in your home at the time of application on 05/24/04. He had been in the home since at least 05/01/04 and you did not confirm this information until 08/13/04.

It is the ruling of the State Hearing Officer that you did commit and intended to commit an Intentional Program Violation. You will be disqualified from participation in the Food Stamp Program for twelve months beginning February, 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-5796

**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 disqualification hearing concluded on September 13, 2005 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 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
Sections 9.1c(1), 1.2E, 2.2B 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 273.16 of the Federal Register
- D-2 Chapter 9.1c(1) of the West Virginia Income Maintenance Manual
- D-3 Food Stamp Application dated 05/24/04 and (D-3a) Rights & Responsibilities dated 05/24/04
- D-4 Chapter 1.2E of the West Virginia Income Maintenance Manual
- D-5 DMV Information
- C-1 Information Obtained From Bureau of Child Support Enforcement and D-6a) RAPIDS screens ACCH and ACMA
- D-6 Case Comments dated 08/13/04 in case #4001105144
- D-7 Chapter 2.2B of the West Virginia Income Maintenance Manual
- D-8 Food Stamp Claim Determination
- D-9 Notification of Intent to Disqualify dated 04/21/05
- D-10 Appointment Letter dated 06/09/05
- D-11 Chapter 20.2 of the West Virginia Income Maintenance Manual
- D-12 ADH Summary

VII. FINDINGS OF FACT:

- 1) The Department requested this hearing be held for the purpose of proving that _____ has been living with _____, father of _____, and holding themselves out to the community as husband and wife. By failing to report this information, committed an Intentional Program Violation (IPV) by not reporting correct household composition and circumstances to the Department.
- 2) The defendant, _____, completed an application for food stamps on 05/24/04. (D-3) The address listed on the application is _____, WV. Listed in the household were _____ and _____. The absent parent listed is _____. The defendant signed the

- application acknowledging “I understand my responsibility to provide complete and truthful information. I have reviewed or had read to me the information contained in this automated portion of the application form and I understand the information. I understand that it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits to which I am not by law entitled. Under penalty of perjury, I certify that the statements are true and correct.”
- 3) The defendant signed the Rights & Responsibilities section of the application 05/24/04. (D-3a) Under #31 the defendant agreed to let the local Department of Health and Human Resources office know within 10 days if: A) We move and/or change our address, name, or telephone number; and C) there are changes in my household’s amount of unearned income or gross monthly income; and #44) certified that all statements on the form had been read by her or to her and that she understood them and accepted these responsibilities.
 - 4) The Driver History Inquiry from DMV shows _____ with birth date 11/13/1970 as being issued a driver’s license 08/16/2002 with the address _____, WV. (D-5)
 - 5) Address changes listed in Bureau of Child Support Enforcement (BCSE) records show address for _____ as of 02/08/99 _____, WV. As of 05/27/04, the address was changed to _____, WV. As of date: 05/01/04 (Update made thru RPUD function). (D-6)
 - 6) Information in RAPIDS show _____’s address 01/15/99 as _____, [REDACTED] WV [REDACTED] (D-6a)
 - 7) The case worker recorded on 08/13/04 “_____ did return my call and she stated that _____, the father of her daughter, is living in her home. He has been there for a few months full time she said. When I asked her for a date she said he moved before school let out. I asked her if May 1, 2004 would be a fair estimate of when he moved in. She said she thought that it was about May 1, 2004 and she felt that was an accurate date that could be established.” _____ was added to the case. (D-7)
 - 8) A claim has been established in the amount of \$345.00 for the period 06/04 through 08/04. (D-9)
 - 9) Section 9.1c(1) of the West Virginia Income Maintenance Manual reads in part that the following individuals living with others or group of individuals living together, must be considered as customarily purchasing food and preparing meals together, i.e., being in the same AG even if they do not do so.....(1) Spouses - For these purposes, spouse means individuals: Who are married to each other under state law; or who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors and tradespeople. Spouses must be in the same AG. There are no exceptions.
 - 10) Section 1.2E of the West Virginia Income Maintenance Manual reads in part the client’s responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.
 - 11) Section 2.2B of the West Virginia Income Maintenance Manual reads in part that reportable changes must be reported within 20 days of the date the change becomes known to the AG (Assistance Group).

- 12) 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.

- 13) 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.

- 14) 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).

- 15) 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 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, an Intentional Program Violation.
- 3) The Department has established a claim in the amount of \$345.00 for the period 06/04 through 08/04. The Department alleges _____ has been living with _____, father of _____, and holding themselves out to the community as husband and wife. By failing to report this information, committed an Intentional Program Violation (IPV) by not reporting correct household composition and circumstances to the Department.

- 4) The un-refuted evidence shows _____ was residing in the defendant's home as early as May 1, 2004. The defendant completed a food stamp application on 05/24/04 listing just herself and as Assistance Group members. The defendant did not report _____ being in the household to the Department until 08/13/04. This was during a phone contact with her case worker.
- 5) The Defendant did not report the correct household composition at the time of application 05/24/04. On 08/13/04 the defendant concurred with her worker that _____ had been in the home since 05/01/04.
- 6) This failure to report correct household composition constitutes an intentional withholding of information. The evidence and testimony at the hearing demonstrates that the defendant intended to withhold this information.

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 11th Day of January, 2006.

Margaret M. Mann
State Hearing Officer