



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
227 Third St.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

January 23, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held January 12, 2006 to determine whether you committed an Intentional Program Violation (IPV).

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.

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 relating to the use presentation, transfer, acquisition, receipt or possession of Food Stamp coupons. Individuals found to have committed an act of Intentional Program Violation will be ineligible for a specified time determined by the number of previous Intentional Program Violation disqualifications. (West Virginia Income Maintenance Manual ' 20.2 and Code of Federal Regulations-7 CFR ' 273.16)

Testimony and evidence submitted at the hearing failed to demonstrate that you intentionally provided false and misleading information about your lump sum payments in regard to your Food Stamp benefits.

The State Hearing Officer finds that you did not commit an Intentional Program Violation and **reverses** the Department's proposal to disqualify you from participation in the Food Stamp Program for 12 months.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Lynn McCourt, Repayment Investigator, DHHR

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

\_\_\_\_\_,  
**Defendant,**

**Action Number: 05-BOR-6885**

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

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a hearing concluded on January 23, 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. This fair hearing was convened on January 12, 2006.

It should be noted here that the Defendant is a current recipient of Food Stamp benefits.

All persons giving testimony were placed under oath.

**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 an EBT card to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

**III. PARTICIPANTS:**

\_\_\_\_\_, Defendant  
Lynn McCourt, State Repayment Investigator, DHHR  
Sally Musick, State Repayment Investigator, DHHR, observing

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the Defendant committed an Intentional Program Violation and should be disqualified from participation in the Food Stamp Program for a period of one (1) year.

**V. APPLICABLE POLICY:**

7 CFR ' 273.16 USDA Code of Federal Regulations  
Common Chapters Manual Chapter 700 App A  
West Virginia Income Maintenance Manual ' 10.4 D 11, 20.2, 20.2 C & D

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Department notifications and correspondence
- D-2a Food Stamp applications/redeterminations with rights and responsibilities
- D-2b Payment schedule from AllState Insurance Co.
- D-2c West Virginia Income Maintenance Manual Sections 10.4 D 11 and 20.2
- D-2d Food Stamp Claim Determination for January 2003 through June 2003
- D-2e Food Stamp Claim Determination for November 2003 through January 2004
- D-2f Food Stamp Claim Determination for March 2004 through May 2005
- D-2g Case comments
- D-3 Hearing summary

**VII. FINDINGS OF FACT:**

- 1) A request for an Administrative Disqualification Hearing (D-1) was received by the Board of Review from State Repayment Investigator Lynn McCourt on November 4, 2005. Ms. McCourt contends that the Defendant committed an Intentional Program Violation and recommends that the Defendant be disqualified from participation in the Food Stamp Program for a period of one (1) year.
- 2) Evidence submitted by the Department (D-2g) indicates that the Defendant was residing in [REDACTED] County when she reported the receipt of a \$5,000 lump sum payment stemming from an insurance settlement.
- 3) Case comments (D-2g) reveal that the Defendant applied for Food Stamps in [REDACTED] County on June 17, 2002 and the application was denied because savings and checking account assets were excessive for the program.

- 4) The Defendant reapplied for Food Stamps in ██████ County on January 31, 2003 (D-2a). Case comments reveal that Food Stamps were approved at that time as the Claimant reported no funds in her checking or savings accounts. Numerous Food Stamp applications/redeterminations (D-2a) were completed between January 2003 and May 2005 in ██████ and ██████ counties.
- 5) In August 2005, the Department received information that the Defendant had been receiving recurring lump sum payments stemming from an automobile accident. Verification from AllState Insurance Co. (D-2b) revealed that the Defendant began receiving \$5,000 per year on April 25, 2002 and would receive \$5,000 annually through April 25, 2005. On April 25, 2006, the Defendant is slated to receive \$10,000 and she will receive \$15,000 on April 25, 2009. Payments will then be received every five years in increasing increments beginning in 2014 through 2029.
- 6) Ms. McCourt contended that insurance settlement payments received by the Defendant were not reported so the payments were not treated as recurring lump sum income in determining the Defendant's Food Stamp allotment.
- 7) The Department sent the Defendant a Notification of Intent to Disqualify (D-1) on September 9, 2005.
- 8) Food Stamp Claim Determination forms (D-2 d, e, f) indicate that the Defendant received a \$1,549 over issuance for the period of March 2004 through May 2005, a \$569 over issuance for the period of January 2003 through June 2003, and a \$402 over issuance for the period of November 2003 through January 2004.
- 9) The Defendant testified that she had gone to the ██████ County DHHR after she received her first settlement check and was told that she should reapply for Food Stamps when she had less than \$2,000 in her bank accounts. She later reapplied and believed that she would remain eligible for Food Stamps if she kept her account balances under \$2,000 when she received subsequent lump sums. The Defendant indicated that she purchased automobiles and paid back loans with the subsequent payments.
- 10) West Virginia Income Maintenance Manual Section 10.4 D 11 (D-2c):  
Recurring lump sum payments, received by an applicant in the month of application or by a recipient, are treated as unearned income and prorated over the period of time they are intended to cover. Non-recurring lump sum payments are excluded as income, but are counted as assets.
- 11) West Virginia Income Maintenance Manual ' 10.4:  
This section contains policy relating income disregards/deductions and concerns the computation of/eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and the number in the benefit group.
- 12) West Virginia Income Maintenance Manual ' 20.2 (D-2c):  
When an AG (Assistance Group) has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program

Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.

- 13) West Virginia Income Maintenance Manual ' 20.2 (C) (2):  
Once an IPV (Intentional Program Violation) is established a disqualification penalty is imposed on the AG (Assistance Group) members who committed the IPV.  
The penalties are as follows: ( ' 9.1, A, 2, g) 1st Offense: 1 year (Disqualification).
- 14) Common Chapters Manual 700, Appendix A, Section B, provides that an Intentional Program Violation 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 relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp benefits.
- 15) Common Chapters Manual 700, Appendix A, Section G (The Decision) states that the State Hearing Officer 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 Section B of Appendix A.

#### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy states that when the Assistance Group has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim.
- 2) If it is determined that an Intentional Program Violation has been committed, a disqualification penalty is imposed on the Assistance Group. For a first offense, the penalty is one (1) year.
- 3) Policy requires the State Hearing Officer to base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the Defendant committed, and intended to commit, an Intentional Program Violation.
- 4) The Defendant failed to report lump sum payments received after 2002. However, testimony indicated that she believed she simply needed to keep her assets below \$2,000 in regard to lump sum payments to remain eligible for Food Stamps. The Defendant provided credible testimony that she had believed recurring lump sums would be counted as assets since excessive assets prevented her from receiving Food Stamps when she applied in June 2002. Therefore, the Hearing Officer is unconvinced that the Defendant intended to commit an Intentional Program Violation.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to disqualify the Defendant from the Food Stamp Program for a period of one (1) year based on the commission of an Intentional Program Violation.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 23rd Day of January, 2006.**

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**Pamela L. Hinzman**  
**State Hearing Officer**