



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 13, 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)

Information submitted at the hearing revealed that you intentionally provided false and misleading information about your household income in regard to your Food Stamp benefits.

It is the decision of the State Hearing Officer that you committed an Intentional Program Violation and a disqualification penalty of one (1) year will be applied. This disqualification period will begin March 1, 2006.

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,

v.

Action Number: 05-BOR-6936

**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 13, 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 not 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

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 ' 1.2, 2.2, 10.4, 20.2, 20.2 C & D

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Department notifications and correspondence
- D-2 June 1, 2004 Food Stamp redetermination form with rights and responsibilities and July 28, 2004 School Clothing Allowance application
- D-3 West Virginia Bureau of Employment Programs Wage Match details
- D-4 Letter dated March 9, 2005 from [REDACTED] signed by Defendant
- D-5 Rapids case comments
- D-6 West Virginia Income Maintenance Manual Sections 2.2, 10.4 and 20.2
- D-7 Food Stamp benefit recovery information
- D-8 Cash Assistance Claim Determination
- D-9 Hearing summary

Claimant's Exhibits

- C-1 Paystubs from [REDACTED] dated November and December 2005

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 14, 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 indicates that the Defendant completed a Food Stamp redetermination (D-2) on June 1, 2004 and reported total household income as her husband's Social Security Disability benefits of \$643 per month and \$60 in Social Security benefits for each of her two children. The Claimant signed Rights and

Responsibilities and check-marked that she understood that earned income for an adult who starts working must be reported to DHHR by the 10th day after the employment begins.

- 3) On June 15, 2004, the Claimant and her husband discussed a potential application for emergency assistance benefits with an economic service worker. Rapids case comments (D-5) reveal the total household income was reported as \$763, an amount excessive for the emergency assistance program. The Claimant chose not to apply.
- 4) On June 27, 2004, the Claimant submitted a West Virginia School Clothing Allowance application (D-2) and reported the only household income as \$643 Social Security Disability for her husband and \$60 each in Social Security for her two children.
- 5) West Virginia Bureau of Employment Programs Wage Match information exchanged with the Rapids computer system (D-3) reveals wages for the Claimant from [REDACTED] beginning in the second quarter of 2004 through the first quarter of January 2005.
- 6) Ms. McCourt contends that the Claimant had three opportunities to report her wages to the Department but failed to do so. A Food Stamp Claim Determination form reveals that the Claimant was overpaid \$3,427 in Food Stamps for the period of August 2004 through April 2005. Because [REDACTED] did not respond to the Department's requests for income verification, Ms. McCourt determined that over-issuances occurred by computing the Claimant's monthly average income based on BEP wage match information.
- 7) Ms. _____ testified that she had been working as a clerk at [REDACTED] but is no longer employed because the job is seasonal. She stated that she did not start work until the end of June 2004 so she did not have income to report during the June 2004 redetermination. She also indicated that the former bookkeeper at [REDACTED] had reported some incorrect wage information and is the defendant in a pending lawsuit as a result. Ms. _____ testified that the income listed by BEP for 2005 appears correct, but she is uncertain about the accuracy of the 2004 income.
- 8) The Department sent the Defendant a Notification of Intent to Disqualify (D-1) on October 11, 2005.
- 9) 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.
- 10) West Virginia Income Maintenance Manual ' 1.2 (E) states:
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) West Virginia Income Maintenance Manual ' 2.2 states that reportable changes must be reported within 10 days of the date the change becomes known to the Assistance Group.

- 12) West Virginia Income Maintenance Manual ' 20.2:
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 an 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) Evidence reveals that the Defendant failed to report her earned income to the Department within 10 days of the date the income was known to the Assistance Group as required by Income Maintenance policy. As a result, the Defendant received an over-issuance of Food Stamp benefits for the period of August 2004 through April 2005. Withholding and/or misrepresenting facts to secure Food Stamps constitutes a clear violation of regulations. Based on the evidence presented, the Hearing Officer finds that an Intentional Program Violation occurred.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to disqualify the Claimant from the Food Stamp Program for a period of one (1) year based on the

commission of an Intentional Program Violation. The disqualification period will begin March 1, 2006.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th Day of January, 2006.

**Pamela L. Hinzman
State Hearing Officer**