



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 27, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held January 26, 2006.

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.

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(c)(2) and 9.1 (A)(2)(g) of the WV Income Maintenance Manual and 7 CFR Section 273.16.

The information which was submitted at your hearing revealed that you committed an intentional program violation of the Food Stamp Program by falsely reporting that your nephews, _____ and _____, lived in your home as household members when they actually only stayed in your home during the daytime causing an overissuance of Food Stamps in the amount of \$2234 for the period of September, 2004 through August, 2005.

It is the decision of the State Hearings Officer that you committed an Intentional Program Violation of the Food Stamp Program and you will be individually disqualified from participation in the Food Stamp Program for a period of one (1) year beginning March, 2006.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Debbie Roberts, Repayment Investigator

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

_____,
Defendant,

Action Number: 05-BOR-7144

**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 an administrative disqualification hearing concluded on January 26, 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. It should be noted that the defendant did not attend the hearing but the hearing was convened in her absence as an appointment letter was sent by regular mail on December 16, 2005 notifying her of the date, time, and location of the hearing and the defendant had an active Food Stamp case at the time the appointment notice was mailed.

II. PROGRAM PURPOSE:

The Program entitled Food Stamp Program 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:

1. Debbie Roberts, Repayment Investigator.

Presiding at the Hearing was Thomas M. Smith, 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 of the Food Stamp Program.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 1.2, 9.1, 10.3, 10.4, 20.2.
Federal Food Stamp Regulations Sections 273.1, 273.9, 273.16.
Common Chapters Manual Section 700, Appendix A.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1 Copy of benefit recovery referral.
DHS-2 Copy of WV Income Maintenance Manual Section 1.2.
DHS-3 Copy of Food Stamp Claim determination (18 pages).
DHS-4 Copy of Federal Regulations Section 273.16 (12 pages).
DHS-5 Copy of case comments 8-26-04.
DHS-6 Copy of case comments 8-30-04.
DHS-7 Copy of case comments 11-10-04.
DHS-8 Copy of case comments 11-30-04.
DHS-9 Copy of case comments 12-2-04.
DHS-10 Copy of case comments 2-17-05.
DHS-11 Copy of case comments 7-12-05.
DHS-12 Copy of case comments 7-13-05.
DHS-13 Copy of case comments 7-21-05.
DHS-14 Copy of WV Income Maintenance Manual Section 2.2 (2 pages).
DHS-15 Copy of WV Income Maintenance Manual Section 20.6.
DHS-16 Copy of notification of intent to disqualify 11-4-05 (5 pages).
DHS-17 Copy of return receipt signed 11-7-05.
DHS-18 Copy of WV Income Maintenance Manual Section 20.1 and 20.2 (7 pages).
DHS-19 Copy of Rights and Responsibilities signed 2-17-05 (4 pages).

VII. FINDINGS OF FACT:

- 1) The Investigations and Fraud Management (IFM) Unit received a referral that the defendant's nephews, _____, did not reside with the defendant but only visited during the daytime when their father, _____, was at work and that an overissuance of Food Stamps in the amount of \$2234 occurred as a result for the period of September, 2004 through August, 2005 (Exhibits #DHS-1 & #DHS-3).

- 2) The defendant had an active Food Stamp case when she phoned the Customer Service Center on 8-26-04 to add her nephews, _____, to the Food Stamp benefit group (Exhibit #DHS-5).
- 3) The defendant's Food Stamp allotment was increased effective September, 2004 due to the addition of her nephews to the benefit group.
- 4) On 7-21-05, the defendant was in the local office and was questioned about the status of her nephews, _____, and the defendant reported that they come to her house while their father works and stay with her from 7:00 a.m. to 9:00 p.m. but do not sleep overnight (Exhibit #DHS-13).
- 5) The defendant had opportunities to report the actual circumstances of her nephews when she called the local office on 8-30-04 to ask about the Food Stamp amount for September, 2004 (Exhibit #DHS-6), when she called the Customer Service Center on 11-10-04 to report a change of address (Exhibit #DHS-7), on 12-2-04 when the defendant called to ask if her worker was trying to reach her (Exhibit #DHS-9), on 2-17-05 when the defendant was in the local office regarding a closure letter and completed a Food Stamp review and reported that her nephews lived with her (Exhibit #DHS-10), on 7-12-05 when the defendant was in the local office to report that _____ had moved out (Exhibit #DHS-11), and on 7-13-05 when the defendant called the Customer Service Center to add her boyfriend, _____, to her case (Exhibit #DHS-12).
- 6) The defendant completed an application/review form on 2-17-05 and signed the rights and responsibilities acknowledging her understanding of her reporting requirements and the penalties for intentional program violation (Exhibit #DHS-19).
- 7) 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.
- 8) WV Income Maintenance Manual Section 20.2, C, 2 states that once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV. See Section 9.1, A, 2, g.
- 9) WV Income Maintenance Manual Section 9.1, A, 2, g states that persons who have been found guilty of an IPV are ineligible as follows: 1st offense: 1 year, 2nd offense: 2 years, 3rd offense: permanent.

VIII. CONCLUSIONS OF LAW:

Common Chapters Section 700, Appendix A defines an intentional program violation as having intentionally made a false statement or concealed or withheld facts. The defendant made a false statement when she requested that her nephews, _____, be

added to the Food Stamp benefit group as household members on 8-26-04 and when she reported during a Food Stamp review on 2-17-05 that her nephews were living in her home. The defendant later reported on 7-21-05 that her nephews actually were only in her home from 7:00 a.m. to 9:00 p.m. while their father worked and that they did not spend the night with her. In addition to making false statements on 8-26-04 and 2-17-05, the defendant had numerous opportunities to report the correct circumstances of her nephews and failed to do so. The defendant committed an intentional program violation which caused a Food Stamp overissuance of \$2234 for the period of September, 2004 through August, 2005.

IX. DECISION:

It is the decision of the State Hearing Officer that the defendant committed an intentional program violation of the Food Stamp Program and she will be individually disqualified from participation in the Food Stamp Program for a period of one (1) year beginning March, 2006.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of January, 2006.

**Thomas M. Smith
State Hearing Officer**