



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**Board of Review**  
**P. O. Box 2590**  
**Fairmont, WV 26555**

**Joe Manchin III**  
**Governor**

**Martha Yeager Walker**  
**Secretary**

July 3, 2007

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

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held June 27, 2007 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred.

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.

Eligibility for the Food Stamp program is based on current policy and regulations. Some of these regulations state as follows: 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).

The information submitted at the hearing demonstrates that you intentionally made a false or misleading statement about your household income in order to receive Food Stamp benefits for which you were not entitled.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. The Disqualification period will begin effective September 1, 2007.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Teresa Smith, SRI, DHHR

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

\_\_\_\_\_,

**Defendant,**

**v.**

**Action Number: 07-BOR-1052**

**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 July 3, 2007 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 hearing was convened on June 27, 2007.

It should be noted here that the Defendant is a current recipient of benefits through the Department.

**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 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:**

Teresa Smith, State Repayment Investigator, DHHR

Presiding at the Hearing was Thomas E. Arnett, 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 for a specified period from participation in the Food Stamp Program.

#### **V. APPLICABLE POLICY:**

7 CFR ' 273.16 USDA Code of Federal Regulations  
Common Chapters Manual Chapter 700, Appendix A  
West Virginia Income Maintenance Manual ' 1.2, 1.4, 9.1, 10.3, 10.4 & 20.2

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

##### **Department's Exhibits:**

DHS-1	Combined Application and Review Form (CAF) and Rights and Responsibilities completed on 10/13/06
DHS-2	Case Comments from RAPIDS – 10/13/06 to 12/4/06
DHS-3	Verification of employment for _____ at [REDACTED]
DHS-4	Food Stamp Claim Determination (ES-FS-5)
DHS-5	Notification of Intent to Disqualify dated December 20, 2006
DHS-6a	West Virginia Income Maintenance Manual Chapter 1.2
DHS-6b	West Virginia Income Maintenance Manual Chapter 1.4
DHS-6c	West Virginia Income Maintenance Manual Chapter 9.1
DHS-6d	West Virginia Income Maintenance Manual Chapter 10.3
DHS-6e	West Virginia Income Maintenance Manual Chapter 20.2

#### **VII. FINDINGS OF FACT:**

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from State Repayment Investigator, Teresa Smith on April 4, 2007. Ms. Smith contends that the Defendant has committed an Intentional Program Violation and is recommending that she be disqualified from participation in the Food Stamp Program for a period of one (1) year.
- 2) Notification of the June 27, 2007 hearing was mailed to the Defendant on April 26, 2007 via First Class Mail as the Defendant is a current recipient of benefits and resides at an address known to be good by the Department.
- 3) The hearing convened as scheduled at 10:30 a.m., and as of 10:45 a.m., the Defendant failed to appear. As set forth in regulations [7 CFR 273.16 (e) (4)], and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 700, Appendix A Part F), the hearing was conducted without the Defendant in attendance.

- 4) On or about December 20, 2006, the Defendant was notified via a Notification of Intent to Disqualify (Exhibit DHS-5), that the Department had reason to believe the Defendant intentionally violated the Food Stamp Program by failing to report that her son, a Food Stamp assistance group (AG) member, was receiving income through employment at the time of her application/review on October 13, 2006.
- 5) The Department submitted Exhibits DHS-1, the Combined Application and Review Form (CAF) and a Rights and Responsibilities (DFA-RR-1) form(s) signed by the Defendant on October 13, 2006. The Defendant reported that she lost her job at [REDACTED] and no other earned income is noted. Exhibit DHS-2, Case Comments made by the worker who took the Defendant's application, state – "No one is working or doing odd jobs at this time. \_\_\_\_\_ is disabled by MRT. \_\_\_\_\_ is a full-time student at PTL."
- 6) The Department purported that a NEHR (New Hire) alert was received indicating that \_\_\_\_\_ (the Defendant's son and Food Stamp AG member) was employed at [REDACTED] effective October 6, 2006.
- 7) Exhibit DHS-3 is verification received by the Department that the Defendant's son was employed by [REDACTED] effective October 9, 2006. This document indicates that the Defendant's son works 25 to 30 hours per week at \$5.15 / \$2.13 an hour depending on whether he was working as a cook or server.
- 8) The Department referred to the Rights and Responsibilities form (included in Exhibit DHS-1) that was completed and signed by the Defendant on the day of application (October 13, 2006). The Defendant marked "yes" to item #4 which states:

I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not receive Food Stamp benefits as follows: First Offense – one year; Second Offense – two years; Third Offense- permanently. In addition, I will have to repay any benefits received for which I was not eligible.

By signing the DFA-RR-1, the Defendant certified that she read, understood, and accepted the rights and responsibilities and that all of the information she provided was true and correct.

- 9) Department's Exhibit DHS-4 (Food Stamp Claim Determination) was submitted to show that by providing false and misleading information about her household income, the Defendant received \$364 in Food Stamp benefits for which she was not entitled during the period November and December 2006.
- 10) West Virginia Income Maintenance Manual ' 10.4:  
This section contains policy relating income disregards and deductions and to computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income {emphasis added} and the number in the benefit group.

- 11) West Virginia Income Maintenance Manual § 10.3 confirms that earned income must be considered when determining Food Stamp eligibility and benefit amount.
- 12) West Virginia Income Maintenance Manual ' 1.2 (E) states that it is the client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 13) West Virginia Income Maintenance Manual ' 20.2:  
When a 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.
- 14) 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, h) 1st Offense: 1 year (Disqualification)
- 15) Common Chapters Manual 700, Appendix A, 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.

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

- 1) The policy and regulations that govern the Food Stamp program state that a Food Stamp Program Violation has occurred when an individual intentionally makes a false or misleading statement, or misrepresented, concealed or withheld facts relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp benefits.
- 2) The evidence reveals that on October 13, 2006, the Defendant provided false and misleading information about her household income when reported that no one in the Food Stamp AG was employed in order to receive Food Stamp benefits for which she was not entitled. This clearly establishes intent.
- 3) There is clear and convincing evidence that the Defendant intentionally committed an intentional program violation as defined in the Food Stamp policy and regulations.
- 4) In accordance with Food Stamp policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first time offense is twelve months (one year).
- 5) Only the Defendant is subject to this disqualification. The 1-year disqualification will begin effective September 1, 2007.

**IX. DECISION:**

Intentionally making of false or misleading statement or misrepresenting facts to secure food Stamp benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Agency=s proposal to apply a one (1) years Food Stamp disqualification is **upheld**. The Disqualification period will begin effective September 1, 2007.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 3<sup>rd</sup> Day of July, 2007.**

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**Thomas E. Arnett  
State Hearing Officer**