



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-1053

**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-1a	Combined Application and Review Form (CAF) and Rights and Responsibilities completed on 12/02/05 (Food Stamp Application)
DHS1b	Combined Application and Review Form (CAF) and Rights and Responsibilities completed on 12/05/05 (WV WORKS Application)
DHS-2	Case Comments from RAPIDS – 11/08/05 through 2/10/07
DHS-3	Employment/Wage Verification Report for _____ 1/101 to 2/4/07
DHS-4	Food Stamp Claim Determination (ES-FS-5) for January 2006
DHS-5	Notification of Intent to Disqualify dated March 9, 2007
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
DHS-6f	WVDHHR Common Chapters Manual, Chapter 700, Appendix A

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. _____ 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 10:00 a.m., and as of 10:15 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 March 20, 2007, the Defendant was notified via a Notification of Intent to Disqualify (Exhibit DHS-5), that the Department had reason to believe she intentionally violated the Food Stamp Program by not reporting employment and earnings of [REDACTED] a Food Stamp assistance group (AG) member, at the time of her application/review on December 2, 2005.
- 5) The Department submitted Exhibits DHS-1a, the Combined Application and Review Form (CAF) and a Rights and Responsibilities (DFA-RR-1) form(s) for Food Stamp benefits signed by the Defendant on December 2, 2005. No earned income through employment is reported and unearned income is a HUD supplement amount of \$128.
- 6) A Combined Application and Review Form (CAF) and a Rights and Responsibilities (DFA-RR-1) form (Exhibit DHS-1b) was signed by the Defendant on December 5, 2005 when she applied for WV WORKS benefits. Page 9 of this of Exhibit DHS-1b indicates no earned income and the only income reported is \$128 in HUD supplements.
- 7) Case Comments (Exhibit DHS-2) documented by the DHHR Worker on December 2, 2005 (at the time of the Food Stamp application) include the following:

“[REDACTED] is not working or doing odd jobs. She has not been released by her physician. Baby was born 11-7-05.”

“[REDACTED] is not working or doing odd jobs. He last worked at [REDACTED] Services. [REDACTED] thinks it was in 04-05 or 05-05. He has registered with the local temp agencies but has heard nothing. Per MACC System, he registered with BEP on 7-18-05.”
- 8) The Department submitted Exhibit DHS-3, Employment/Wage Verification Report from [REDACTED] for _____. This document verifies that _____ has been employed through [REDACTED] since August 2005 and with the exception of October 2005, he has worked every month up to January 2006.
- 9) The Department referred to the Rights and Responsibilities form (included in Exhibit DHS-1a and DHS-1b) that was completed and signed by the Defendant on the date(s) of application (December 2, 2005 and December 5, 2005). 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 received 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.

- 10) 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 \$202 in Food Stamp benefits for which she was not entitled during the period January 2006.
- 11) 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.
- 12) West Virginia Income Maintenance Manual § 10.3 confirms that earned income must be considered when determining Food Stamp eligibility and benefit amount.
- 13) 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.
- 14) 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.
- 15) 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)
- 16) 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 December 2, 2005 and December 5, 2005, the Defendant provided false and misleading information about her household income when she reported that no one in the Food Stamp AG was employed.
- 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 receive 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 3rd Day of July, 2007.

**Thomas E. Arnett
State Hearing Officer**