



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

June 11, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held June 7, 2007 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred.

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.

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. An individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple Food Stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years. (West Virginia Income Maintenance Manual ' 20.2 and Code of Federal Regulations- 7 CFR ' 273.16).

The information submitted at the hearing fails to demonstrate that you intentionally provided false and misleading information in order to receive Food Stamp benefits for which you were not eligible.

It is the decision of the State Hearing Officer that an Intentional Program Violation was not committed by you and a disqualification penalty cannot be applied.

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-1054

**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 June 11, 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 7, 2007.

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, 8.6, 9.1, & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1	Application dated 4/21/06 (State [REDACTED])
DHS-2	Application dated 5/16/06 (State of West Virginia)
DHS-3	Benefits issued from both states
DHS-4	Copy of rent receipts from residence in [REDACTED] and West Virginia
DHS-5	Food Stamp Claim Determination
DHS-6	IG-BR-44 & 44a
DHS-7a	WVIMM, Chapter 1.2
DHS-7b	WVIMM, Chapter 1.4
DHS-7c	WVIMM, Chapter 8.6
DHS-7d	WVIMM, Chapter 9.1
DHS-7e	WVIMM, Chapter 20.1
DHS-7f	Common Chapters Manual, Appendix A
DHS-8	Case Comments from RAPIDS 1/20/06 through 5/31/07

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 disqualification from participation in the Food Stamp Program for a period of 1 to 10 years if it is determined that he made a fraudulent statement or representation with respect to his place of residence in order to receive multiple Food Stamp benefits simultaneously.
- 2) Notification of the June 7, 2007 hearing was mailed to the Defendant on April 25, 2007 via Certified, Restricted Delivery, mail as the Defendant is not a current recipient of benefits through the WV Department of Health and Human Resources, hereinafter Department. A signature was placed on the return receipt and is dated 4/28/07.

- 3) The hearing convened as scheduled at 1:00 p.m., and as of 1:15 p.m., the Defendant failed to appear. As set forth in the Code of Federal Regulations §7 CFR 273.16 (e) (4), and the 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) The Defendant completed an application for Food Stamp and Medicaid benefits in the [REDACTED] County Department of Job and Family Services office in [REDACTED] on April 21, 2006 (DHS-1). Exhibit DHS-3b shows that the Defendant received Food Stamp benefits from the State of [REDACTED] beginning 4/21/06 and had uninterrupted benefits through 4/2/07 (the last date checked by the Department).
- 5) The Department submitted Exhibit DHS-2, Combined Application and Review Form (CAF), completed by the Defendant on 5/16/06, wherein the Defendant applied for Food Stamp and Medicaid benefits in _____ County, West Virginia. Exhibit DHS-3a reveals that the Defendant received Food Stamp benefits during the period 5/17/06 through 1/8/07 from the State of WV.
- 6) The Department cited Exhibit DHS-4a (rent receipt dated 3/5/06 to verify residence in [REDACTED] and Exhibit DHS-4b (rent receipt dated 6/18/07 to show residence in WV) as evidence that the Defendant was untruthful about his place of residence in order to receive multiple Food Stamp benefits simultaneously from [REDACTED] and West Virginia. The Department noted that the Defendant reported he was not receiving Food Stamp benefits from another state {see Page 2 of DHS-2 (CAF) completed on 5/16/07} and therefore provided false and misleading information.
- 7) Exhibit DHS-5 (Food Stamp Claim Determination) was submitted to show that by providing false and misleading information, the Defendant received \$934 in Food Stamp benefits from the State of WV for which he was not eligible.
- 8) Exhibit DHS-8 is Case Comments documented in RAPIDS. This exhibit reveals that the Department was contacted by [REDACTED] Co. DHHR on 12/21/06 and advised that the Defendant was receiving benefits through them since March 2006. The determination was made that the Defendant's Social Security check was being mailed to [REDACTED] so the Defendant's address was changed and the case in WV was closed. On 12/29/06, the Department Worker spoke with _____ (last name not documented), the Defendant's niece, who advised them the Defendant cannot read or write and needs to reapply for Food Stamp benefits. The Defendant's niece stated that she has to use EBT to purchase food for _____ and keeps food at her house and gives him the food every time he visits so that no one will eat all of his food. She claimed that the Defendant has been living in WV and she did not know anything about him receiving benefits in [REDACTED] and stated "Maybe someone else applied in [REDACTED] in his name." She stated that _____ is legally retarded. She stated that other people are taking everything off of him. She has to take care of everything for him because he is incapable of taking care of things himself.

On January 23, 2007, the Defendant returned to the [REDACTED] Co. DHHR Office and stated that he wanted Food Stamps on his card. He stated that he does not live in [REDACTED]. The Defendant's niece wrote a statement that he has lived in 3 different places over the last couple years but did not sign the statement. The Defendant was informed to return with verification.

On January 24, 2007 the Defendant was in the _____ Co. DHHR Office and again claimed that he has been living in West Virginia since March 2006. The Defendant was advised that he would have to have his case closed in _____ before his case can be opened in West Virginia.

On May 22, 2007 _____ (last name and relationship unknown) called the _____ Co. DHHR on the Defendant's behalf. She stated that _____ needed to know his date of birth and his Social Security number so he could change the PIN on his EBT card. The Worker advised _____ that the Defendant's information could not be released. The Worker documented that the Defendant could be heard in the background saying he didn't care he just needed to buy food.

On 5/31/07 the Worker documented that the Defendant was in the _____ County DHHR to get verification of his Social Security Number and his date of birth.

- 9) Page 1 of 4 on Exhibit DHS-1 (_____ application) contains a signature section at the bottom of the page. The Defendant's first name is not legible and his signature appears to have been finished by someone else because his last name is easily read. Page 1 of 4, Section 3, indicates that the Defendant was being represented by _____ when the _____ application was completed and her signature appears on page 4 of 4. The Defendant signed the application for benefits in West Virginia with an "X." The Department contends that the Defendant cannot be retarded because his Social Security benefits and SSI checks are sent to him and not a payee.
- 10) West Virginia Income Maintenance Manual ' 1.2 (E):
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 ' 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.
- 12) West Virginia Income Maintenance Manual ' 20.2 (C) (2) and the Code of Federal Regulations §7 CFR 273.16(b) states that 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)
- 13) The Code of Federal Regulations found at §7 CFR 273.16(b) (5) states that an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple Food Stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.
- 14) 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) In order to be found guilty of an Intentional Program Violation (punishable by a 1-3 year(s) disqualification), the evidence must show that the Defendant intentionally {emphasis added} provided false and misleading information in order to receive Food Stamp benefits for which he was not entitled under law. Further, the Code of Federal Regulations states that an individual found to have made a fraudulent statement or representation with respect to identity or place of residence in order to receive multiple Food Stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.
- 2) This case is complicated by the fact that the Defendant's mental capacity is virtually unknown and when the WV DHHR Worker has spoken to individuals who hold themselves out to be representatives of the Defendant, very little information has been received. The Defendant's niece (____) reportedly takes care of his business in West Virginia and ____ acted as his authorized representative when his application was completed for Food Stamps in (____). The evidence fails to demonstrate with any degree of certainty that the Defendant has the mental capacity to intentionally mislead the Department.
- 3) Whereas the evidence fails to support a finding that the Defendant acted with intent, I am unconvinced that the Defendant committed an Intentional Program Violation as defined in the Food Stamp policy and regulations.

IX. DECISION:

Based on evidence presented, an Intentional Program Violation cannot be affirmed. The Agency's proposal to apply a Food Stamp disqualification is therefore **reversed**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 11th Day of June, 2007.

Thomas E. Arnett
State Hearing Officer