



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street West  
Charleston, WV 25313

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 10, 2007

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 10, 2007. Your hearing was based on the Department of Health and Human Resources' proposal that you committed an Intentional Program Violation.

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 Stamps is based on current policy and regulations. Some of these regulations state as follows: 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.

The information submitted at your hearing revealed: You intentionally withheld reporting at the time of application that you were receiving unemployment benefits. This resulted in an over issuance of Food Stamp Benefits in the amount of \$862.00 for the period covering December 18, 2006 through March 2007.

It is the decision of the State Hearings Officer to **UPHOLD** the **PROPOSAL** of the Department that you committed an Intentional Program Violation. You will be sanctioned from the Food Stamp Program for a period of twelve (12) months. The sanction will be effective August 2007.

Sincerely,

Ray B. Woods, Jr., M.L.S.  
State Hearing Officer  
Member, State Board of Review

cc: State Board of Review  
Mrs. Debbie Roberts, Repayment Investigator

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

\_\_\_\_\_,  
**Defendant,**

**v.**

**Action Number: 07-BOR-1501**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF THE STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing concluded on July 10, 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 Administrative Disqualification Hearing was scheduled for July 10, 2007 on a timely appeal filed June 5, 2007. The Scheduling Notice, Request for an Administrative Disqualification Hearing, and Waiver of Administrative Disqualification Hearing forms were mailed to the Defendant via First Class Mail on June 5, 2007.

The issue in this particular matter involves the Defendant, \_\_\_\_\_, intentionally withholding facts about receiving unemployment benefits at the time of application.

This allegedly resulted in an over issuance of Food Stamp Benefits in the amount of \$862.00. The Department is seeking a ruling of Intentional Program Violation; Disqualification from the Food Stamp Program for a period of one (1) year; and Repayment of the over issued Food Stamp Benefits.

It should be noted here that, the Defendant was receiving Food Stamp benefits at the time of the hearing.

**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:**

Debbie Roberts, Repayment Investigator

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., 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.

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

WV Income Maintenance Manual Sections 1.2 E Client Responsibility; 2.2 Timely Reporting; 20.6 Welfare Misrepresentation; 20.2 Food Stamp Claims and Repayment Procedures; and 7 CFR 273.16 Intentional Program Violation (IPV)

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

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

DHS-1	Benefit Recovery Referral dated 02/27/07
DHS-2	WVIMM Section 1.2 E Client Responsibility
DHS-3	Food Stamp Claim Determination
DHS-4	7CFR273.16
DHS-5	Application dated 12/18/06
DHS-6	Rights and Responsibilities dated 12/18/06
DHS-7	Self Reporting Screening Form dated 12/11/06
DHS-8	Benefit Payment History
DHS-9	WVIMM Section 2.2 B Reporting Requirements
DHS-10	WVIMM Section 20.6 A Definition of Welfare Fraud
DHS-11	Notification of Intent to Disqualify dated 04/26/07
DHS-12	WVIMM Section 20.2 Food Stamp Claims and Repayment Procedures

#### **Claimants' Exhibits:**

None

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

1. The Investigation and Fraud Management Unit received a referral that the Defendant failed to report unemployment benefits (DHS-1).
2. West Virginia Income Maintenance Manual Chapter 1.2 E states in part (DHS-2):

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. When the client is not able to provide the required verification, the Worker must assist him. The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions: (1) Denial of the application; (2) Closure of the active AG; (3) Removal of the individual from the AG; Repayment of benefit; and Reduction in benefits
3. By intentionally failing to report the correct household composition, Food Stamps were over issued for the period covering December 18, 2006 through March 2007 in the amount of \$862.00 (DHS-3).
4. Because of the nature of the claim, it has been pursued as an Intentional Program Violation (IPV). The Code of Federal Regulations, Sec. 273.16(c) states, "An IPV consists 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 or ATPs." (DHS-4).
5. The Application taken on December 18, 2006 for West Virginia WORKS and Food Stamps, lists a three person household consisting of the Defendant and his two children (DHS-5).
6. The Defendant signed the Rights and Responsibilities Section of the Application, affirming his responsibility to provide correct information (DHS-6).
7. The Defendant completed a screening form indicating a three person household and zero income (DHS-7).
8. The Benefit Payment History Printout indicates unemployment benefits were issued to the Defendant from October 19, 2006 through March 2007 (DHS-8).
9. West Virginia Income Maintenance Manual Chapter 2.2 B (3) Timely Reporting & Follow-up (DHS-9) states in part:

To determine if a claim must be established or lost benefits restored, a decision must be made as to whether or not a change was reported in a timely manner. When the client does not report in a timely manner and the change could have been made, a claim may be established. Benefits are not restored when the change which would have increased benefits is not reported within the AG's appropriate time limit.

- 10.** West Virginia Income Maintenance Manual Chapter 20.6A (DHS-10) states in part:

Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient in obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device.

The important elements constituting an offense under this statute are that any false representation was willfully made or that any other device to obtain assistance was a misrepresentation.

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false. It is an essential element in a misrepresentation charge that the client knew his statement was false.

Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false.

- 11.** The Repayment Investigator mailed the Notification of Intent to Disqualify and Waiver of Administrative Disqualification Hearing forms to the Defendant on April 26, 2007 (DHS-11). The Defendant did not respond.

- 12.** The Repayment Investigator recommended a ruling of Intentional Program Violation, twelve month Food Stamp sanction, and repayment of the over issued Food Stamp benefits.

- 13.** The request for sanction and repayment are in compliance with the Code of Federal Regulations (CFR) section 273.16, and West Virginia Income Maintenance Manual Chapter 20.2 (DHS-12) which states in part:

When an AG has been issued more food stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the coupon entitlement of the AG & the coupon allotment the AG was entitled to receive.

- 14.** West Virginia Income Maintenance Manual Chapter 20.2 C (2) states in part (DHS-12):

The individual who is found to have committed an IPV is ineligible to participate in the Program for a specified time, depending on the number of offenses committed.

- 15.** West Virginia Income Maintenance Manual Chapter 20.2 E (3) (a & b) Collection Procedures states in part (DHS-12):

- A. Offsetting Lost Benefits – A claim, whether UPV or IPV, must be collected by offsetting when lost benefits are owed to the Assistance Group, but have not yet been restored.
- B. Treasury Offset - Claims which have a balance of at least \$25, are delinquent and are not over 10 years old are subject to referral for collection of the claim by

offset of the client's federal income tax refund and any federal benefits/payments.

- 16.** West Virginia Income Maintenance Manual Chapter 20.2 F (2)(a) IPV Errors states in part (DHS-12):

The current coupon entitlement, after the disqualified member(s) has been removed from the AG, is reduced by 20% of the entitlement or \$20, whichever is greater. The reduction is based on the entitlement amount prior to the removal of the disqualified member.

- 17.** The Defendant intentionally withheld reporting at the time of application, that he was receiving unemployment benefits.

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

- 1)** 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.
- 2)** The evidence clearly indicates the Defendant intentionally withheld reporting at the time of application, that he was receiving unemployment benefits. This resulted in an over issuance of Food Stamp Benefits in the amount of \$862.00 for the period covering December 18, 2006 through March 2007.

### **IX. DECISION:**

It is the decision of this State Hearing Officer that the Defendant committed an Intentional Program Violation. He will be sanctioned from the Food Stamp Program for a period of 12 months effective August 2007.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 10th Day of July 2007.**

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**Ray B. Woods, Jr., M.L.S.  
State Hearing Officer**