



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

August 16, 2007

Dear Ms. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 2, 2007. Your hearing request was based on the Department of Health and Human Resources' claim that you have 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 Stamp program is based on current policy and regulations. Some of these regulations state as follows: 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 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 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 9.1,A,2,g of the WV Income Maintenance Manual and 7 CFR Section 273.16 .

The information submitted at your hearing did not clearly conclude that you committed an intentional program violation by failing to report your children were not in your home.

It is the decision of the State Hearings Officer to **reverse** the proposed action of the Department to apply a Food Stamp Sanction to your case for an intentional program violation. While there may have been an over payment due to your failure to report your children out of the home, evidence was not convincing that you intentionally provided false information.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Teresa Smith, Repayment Investigator

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

_____,

Defendant,

v.

Action Number: 07-BOR-1550

**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 a hearing concluded on August 2, 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 convened on August 2, 2007 on a request, filed by the Agency on June 11, 2007.

It should be noted here that any adverse action of the agency has been postponed pending a hearing decision. The claimant did not appear for the hearing after being properly notified of the hearing date and time.

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 food stamp 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, Repayment Investigator

Presiding at the Hearing was Sharon K. Yoho, 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 has committed an act of intentional program violation.

V. APPLICABLE POLICY:

Common Chapters Manual, Chapter 700, Appendix A, Section B
West Virginia Maintenance Manual Section 1.2; 1.4; 9.1; and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp review dated July 28, 2006
- D-2 Civil Court Case for custody and child support dated December 2006
- D-3 Case Comments July 10, 2006 thru January 24, 2007
- D-4 Food Stamp Claim Determination for months August 2006 thru January 2007
- D-5 Notification of intent to disqualify dated April 19, 2007
- D-6 WV Income Maintenance Policy 1.2, 9.1, 10.3, 20.2,
- D-7 Common Chapters Manual Appendix A

VII. FINDINGS OF FACT:

- 1) The defendant completed a Food Stamp review on July 28, 2006. She reported at this review that her household consisted of four persons including two children. The defendant has three children and her oldest child had been living with his father for some time. These two school age children had been residing with her.
- 2) On October 13, 2006, the Income Maintenance worker received office communication from the Child Support unit. The Child Support staff reported that they had received information from the children's father advising them that the children had been with him since June 2006 and that he is to file a petition for modification of child support and custody. The caseworker did not act on this information since the Food Stamp case was under simplified reporting requirements and the information received was not from a verifiable source. The worker set a control to check with the defendant when she returned for her next Food Stamp review.

- 3) Civil Court case documents (Exhibit D-2) show the father's December 15, 2006 Petition For Modification of custody and child support. A court date of March 15, 2007 resulted in an April 23, 2007 court order to be issued.
- 4) On January 24, 2007, the defendant returned to the DHHR office to complete her Food Stamp review. When the worker questioned her about household members, she did advise the worker that the two children have been living with their father since June. When the worker asked why she did not report them out of the home in July, she told the worker it was because she thought that they would be coming back, but they decided to stay with their father.
- 5) The caseworker removed the two children from the benefit group effective for February 2007 and referred the case for repayment.
- 6) The defendant was made aware of her responsibility to report accurate information at her July 2006 review. She was also advised of the consequences for intentionally giving false information or withholding information.
- 7) The Repayment Investigator determined that the defendant may have committed an intentional program violation (IPV) in not reporting the children out of the home on July 28, 2006. This Administrative Disqualification Hearing was requested to determine if an IPV was committed.
- 8) **WV Income Maintenance Manual Policy § 1.2, states:** The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.
- 9) **WV Income Maintenance Manual Policy § 1.4, states:** Individuals who have committed an Intentional Program Violation (IPV) are ineligible for a specified time, determined by the number of previous (IPV) disqualifications.
- 10) **WV Income Maintenance Manual Policy § 20.2 states:** Intentional Program Violations include making false or misleading statements, misrepresentations, concealing or withholding information.
- 11) **According to Common Chapters Manual, Chapter 700, Appendix A, Section B,** an intentional program violation consists of having intentionally: (1) made a false 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 statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons.
- 12) **According to policy in WV Income Maintenance Manual Section 9.1,A,2,g,** the disqualification penalty for having committed an Intentional Program Violation is twelve months for the first violation, twenty-four months for the second violation, and permanent disqualification for the third violation..

VIII. CONCLUSIONS OF LAW:

- 1) Common Chapters Manual Appendix A identifies the definition of Intentional Program Violation to be, intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts. When questioned by the worker as to why she did not report the children out of her home, she answered that she thought that the children were coming back. It is common for school age children to have visits with the non-custodial parent during the summer. The defendant's response to the worker's question suggests that in July she was considering the children to be visiting their father rather than moving from her household.
- 2) Testimony and evidence was not clear regarding how many actual days the children had been gone prior to the July 28, 2006 application. Most likely, it was beyond 30 days, however; it could have been just short of 30 days. The evidence regarding the father's intent to petition for custody does not support that he made this decision in June or even July. His petition was filed in December 2006.
- 3) Although the defendant had an obligation to advise the caseworker in July that her two children were not in the home, it was not proven by clear and convincing evidence and testimony that this defendant committed an intentional program violation. It is reasonable to believe that she considered her children to be members of her household and simply visiting their father.

IX. DECISION:

It is the finding of this Hearing Officer that the defendant did not commit an intentional program violation (IPV). While it may be true that this defendant was over paid Food Stamp, benefits due to her failure to report accurate information such overpayment would be due to a client unintentional program violation (UPV). It is the ruling of this Hearing Officer to **reverse** the Department's proposed action to impose a 12-month sanction for an IPV.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of August 2007.

**Sharon K. Yoho
State Hearing Officer**