



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
PO Box 6165
Wheeling, WV 26003

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 19, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 23, 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 that your son, _____, was living with his father during the months of January 2002 through April 2003 while you were receiving food stamps for him. This resulted in an over issuance of Food Stamp benefits.

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 January 2008. You will also be required to repay the food stamp benefits over issued to you for the time period of January 2002 through April 2003.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Teresa Smith, Repayment Investigator

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

_____,

Defendant,

v.

Action Number: 07-BOR-1952

**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 October 23, 2007 for Ms. _____. 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. Notification of the October 23, 2007 hearing was mailed to the Defendant on September 11, 2007 via First Class Mail as the Defendant is a current recipient of Medicaid benefits and resides at an address known to be good by the Department.

It should be noted here that the defendant was present during 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:

_____, Defendant
_____, Defendant's Mother
_____, Defendant's Son
Teresa Smith, Repayment Investigator

Presiding at the Hearing was Melissa Hastings, 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 Section 9.1 (A) (2) (f); Common Chapters Manual, Chapter 700, Appendix A, Section B ; WV Income Maintenance Manual Section 1.2 E; WV Income Maintenance Manual Section 1.4 L; WV Income Maintenance Manual Section 203.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1a	Application dated 05/22/02 with Rights and Responsibilities
DHS-1b	Application dated 11/04/02 with Rights and Responsibilities signed by Defendant 11/04/02
DHS-1c	Application dated 08/15/03 with Rights and Responsibilities signed by Defendant 08/26/03
DHS-1d	Application dated 03/01/04 with Rights and Responsibilities signed by Defendant 03/01/04
DHS-1e	Application dated 08/24/04 with Rights and Responsibilities signed by Defendant 08/24/04
DHS-1f	Application dated 09/23/04 with Rights and Responsibilities signed by Defendant 09/23/04
DHS-2	Application for West Virginia School Clothing Allowance signed and dated by Defendant 07/20/04
DHS-3	Case Comments dated 05/22/02 through 03/22/07
DHS-4	Verification of _____ residence dated 06/23/05 from _____
DHS-5	_____ County Family Court order dated 02/20/02 between _____ and _____
DHS-6	Food Stamp Claim Determination (ESFS5) with issuance dates of 09/01/02 through 05/31/05 totaling \$3972.00
DHS-7	Notification of Intent to Disqualify (IGBR44a) dated 03/19/07 with a Waiver of Administrative Disqualification Hearing (IGBR44B) attached.
DHS-8a	WV Income Maintenance Manual Section 1.2E Client Responsibility
DHS-8b	WV Income Maintenance Manual Section 1.4L Repayment and Penalties
DHS-8c	WV Income Maintenance Manual Section 9.1g and h Individuals Excluded by Law

DHS-8d WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures
DHS-8e Common Chapters Manual Chapter 700 Appendix A, Section B
DHS-9 Verification of Attendance from [REDACTED] High School signed by _____
DHS-10 Request for an Administrative Disqualification Hearing (IG-BR-30) dated 08/15/07
DHS-11 Hearing Summary (IGBR31) dated 10/22/07

Claimants' Exhibits:

C-1 Letter from [REDACTED] Housing Authority signed by _____ dated 10/18/07

VII. FINDINGS OF FACT:

- 1) Common Chapters Manual, Chapter 700, Appendix A, Section B, indicates an intentional program violation consists of having intentionally made a false statement, or misleading 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) WV Income Maintenance Manual Section 9.1 (A) (2) (f) indicates 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.
- 3) WV Income Maintenance Manual Section 1.2 E Client Responsibility indicates that it is the client's responsibility to provide information about his circumstances so the Worker is able to make a correct decision about eligibility.
- 4) WV Income Maintenance Manual Section 9.1 A Food Stamp Eligibility Determination Groups indicates that the Food Stamp AG must include all eligible individuals who both live together and purchase and prepare their meals together.
- 5) WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures indicates when an assistance group has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing an Intentional Program Violation claim.
- 6) Direct testimony received during this hearing from the Defendant, her son and her Mother indicate that Defendant's son, _____, lived with his father from on or about about October 2001 through April 2003. He lived with Defendant from May 2003 through November 2005. He was back and forth between both parents from late November 2005 until September 2006. He resumed living with his mother in September 2006 and remains in her care today.

- 7) Defendant was in the local DHHR Office on November 4, 2002 and completed an application for Food Stamp Benefits **(DHS-1b)**. She signed the Rights and Responsibilities section of the application acknowledging Question #4 which states, "I understand if I am found 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."
- 8) Testimony from the department's representative indicates that the Defendant included herself, _____ and _____ as household members on the application dated November 4, 2002 **(DHS-1b)**.
- 9) Testimony from the department's representative indicates that as a result of this application the Defendant was recertified for food stamp benefits for a household of three.
- 10) Testimony from the Defendant indicates that she was diagnosed with cancer in 2001 and was not expected to live. She went to court and had custody of her son, _____, turned over to his father, _____. A court order was issued dated February 20, 2002 acknowledging this change in custody arrangement. **(D-5)**
- 11) The Department representative contends that this court order **(D-5)** and school records **(D-9)** all prove that Defendant's son was in the care and custody of Defendant's husband from January 2002 to the present .
- 12) Repayment Investigator, Teresa Smith, prepared Food Stamp Claim Determination form ESFS5 **(DHS6)** indicating Defendant received \$3972 in excess food stamps from September 2002 through May 2005. This overissuance calculation was based on the fact that Defendant received food stamps for a three person household when she should have received food stamps for a two person household.
- 13) Defendant's testimony indicates that during the time that her son was not living with her, she gave him his portion of the food stamps to utilize for his food needs. Considered it as meeting her child support obligation.

VIII. CONCLUSIONS OF LAW

- 1) Common Chapters Manual section 700 provides a definition for a food stamp intentional program violation. Intentionally providing inaccurate information to receive food stamp benefits to which an individual is not entitled meets the definition for consideration for an intentional program violation.
- 2) WV Income Maintenance Manual Section 1.2 indicates that it is the customer's responsibility to provide accurate information to the agency for a proper eligibility determination to be made.
- 3) WV Income Maintenance Manual Section 1.4 indicates that anyone found to have committed an Intentional Program Violation is ineligible for a specified time, determined by the number of previous disqualifications.

- 4) WV Income Maintenance Manual Section 9.1 indicates the food stamp assistance group must include all eligible individuals who both live together and purchase and prepare their meals together. This section also identifies the disqualification periods for intentional program violations as:

1 st offense	1 year
2 nd offense	2 years
3 rd offense	Permanent
- 5) Evidence and testimony received during this hearing are clear that the Defendant provided inaccurate information concerning the living arrangements of her son, _____. While the agency provided documentary evidence which seemed to indicate that the Defendant's son was not living with her from January 2002 until the present, direct testimony received from the Defendant, her mother and her son reveal that the only time that Defendant's son lived exclusively with his father was on or about October 2001 until April 2003.
- 6) The agency's claim determination for September 2002 through May 2005 is not supported by the direct testimony of the son whose living arrangements are in question.
- 7) Evidence and testimony are clear that an overissuance of benefits is appropriate for the time period of October 2001 through April 2003. The agency is directed to recalculate the overissuance on this basis.
- 8) Evidence and testimony are also clear that the Defendant completed an application for benefits on November 4, 2002 in which she listed her son as living in her home. Based on testimony received during this hearing her son was living with his father. Defendant signed the Rights and Responsibilities section of the application acknowledging her responsibility to report true and accurate information. She also acknowledged her responsibility for repayment of overissued benefits and sanctions for failing to provide accurate information.

IX. DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Department's **PROPOSAL** that Defendant committed an Intentional Program Violation. A one year disqualification period is to be applied to the Defendant effective January 2008 and collection action initiated for repayment of the overissuance that is calculated for the time period October 2001 through April 2003.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of November 2007.

Melissa Hastings
State Hearings Officer

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