



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 26, 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 you were receiving HUD assistance on your rent. As a result of your failure to report your rent obligation accurately, you were overissued Food Stamp Benefits for the period covering November 1, 2001 through March 31, 2007 in the amount of \$4687.00.

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.

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-1954

**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 26, 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. Notification of the October 26, 2007 hearing was mailed to the Defendant on September 13, 2007 via First Class Mail as the Defendant is a current recipient of Food Stamp benefits and resides at an address known to be good by the Department.

It should be noted here that the defendant was not 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:

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 Sections 1.2, 1.4 9.1 (A) (2) (f), 10.4, 20.2 and Common Chapters Manual, Chapter 700, Appendix A, Section B.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1a Application dated 03/12/03 with Rights and Responsibilities signed 03/12/03
- DHS-1b Aged/Disabled FS Periodic Report signed 03/18/04
- DHS-1c Aged/Disabled FS Periodic Report received 03/03/05
- DHS-1d Food Stamp 24 month review signed 03/13/06
- DHS-1e Food Stamp 12 month Contact Review received 02/26/07
- DHS-2 WVDHHR change reporting form dated 03/05/07
- DHS-3 Case Comments dated 01/24/02 through 03/07/07
- DHS-4 Verification letter dated April 5, 2007 from the Housing Assistance Program of [REDACTED]
- DHS-5 Food Stamp Claim Determination (ESFS5) with issuance dates of 11/01/01 through 03/31/07 and an overissuance totaling \$4687.00
- DHS-6 Notification of Intent to Disqualify (IGBR44a) dated 05/11/07 with a Waiver of Administrative Disqualification Hearing (IGBR44B) attached.
- DHS-7a WV Income Maintenance Manual Section 1.2E Client Responsibility
- DHS-7b WV Income Maintenance Manual Section 1.4 Repayment and Penalties
- DHS-7c WV Income Maintenance Manual Section 9.1g and h Individuals Excluded by Law
- DHS-7d WV Income Maintenance Manual Section 10.4 Item 7
- DHS-7e WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures
- DHS-7f Common Chapters Manual Chapter 700 Appendix A, Section B
- DHS-8 Request for an Administrative Disqualification Hearing (IG-BR-30) dated 08/14/07
- DHS-9 Hearing Summary (IGBR31) dated 10/23/07

Claimants' Exhibits:

None

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 10.4 Item 7 (1) indicates a rent subsidy paid directly to the client's landlord is not counted as income and is not used as a shelter deduction when calculating the client's food stamp allotment.
- 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) Defendant was in the local DHHR Office on March 12, 2003 and completed an application to review her for Food Stamp Benefits (**DHS-1a**). 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."
- 7) Testimony from the department's representative indicates that the Defendant reported her rent obligation as \$300.00 per month (**DHS-1a**).
- 8) Testimony from the department's representative indicates the Defendant's application (**DHS-1a**) was approved and Food Stamp benefits recertified using the \$300 per month rent obligation reported by the defendant.
- 9) Testimony from the department's representative indicates Defendant completed yearly mail in reviews in March 2004 (**DHS-1b**), March 2005 (**DHS-1c**), March 2006 (**DHS-1d**) and March 2007 (**DHS-1e**) to recertify her Food Stamp benefits. On each of these reviews the defendant listed her rent as \$300 per month and indicated she paid the rent herself.
- 10) On March 5, 2007 the defendant completed a change reporting form (**DHS-2**) on which

she reported a new address. She also reported her rent amount as \$300 and that she paid the rent herself.

- 11) A letter received April 6, 2007 from the Housing Assistance Program in [REDACTED] [REDACTED] indicates the following information concerning the defendant's rent obligation.

| Date | Contract Rent | Her Portion |
|----------|---------------|-------------|
| 10-01-01 | \$240.00 | \$64.00 |
| 10-01-02 | \$240.00 | \$69.00 |
| 08-01-03 | \$300.00 | \$53.00 |
| 08-01-04 | \$300.00 | \$37.00 |
| 08-01-05 | \$300.00 | \$41.00 |
| 08-01-06 | \$300.00 | \$36.00 |

- 12) Repayment Investigator, Teresa Smith, prepared Food Stamp Claim Determination form ESFS5 (**DHS-5**) indicating defendant was issued \$4687.00 in Food Stamp benefits from November 2001 through March 2007 to which she was not entitled.
- 13) Defendant was issued a Notification of Intent to Disqualify with a Waiver of Administrative Disqualification Hearing attached (**DHS-7**) on May 11, 2007. Defendant failed to respond to this notification.
- 14) A request for an Administrative Disqualification Hearing (**DHS-8**) was received by the Board of Review on August 16, 2007.
- 15) The facts presented during this Administrative Disqualification Hearing supports the Department's proposal, that Defendant intentionally failed to report her accurate rent obligation when applying for Food Stamp benefits. By failing to provide accurate information to the department concerning her rent obligation when she applied for Food Stamp benefits, the Defendant received \$4687.00 in Food Stamp benefits from November 2001 through March 2007 to which she was not entitled.

VIII. CONCLUSIONS OF LAW:

- 1) Common Chapters Manual, Chapter 700, Appendix A, Section B, states that an intentional program violation consists of having intentionally made a false statement, 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 1.2 indicates the client is responsible for reporting accurate information to the worker when making an application for benefits. Evidence is clear that the defendant failed to accurately report her rent obligation to the agency on applications and reviews.

- 3) WV Income Maintenance Manual Sections 9.1 and 20.2 indicates that defendant's found to have intentionally withheld information from the agency for the first time will be disqualified from participation in the Food Stamp Program for a period of one year.
- 4) There is clear and convincing evidence that the Defendant intentionally reported inaccurate information concerning her rent obligation and was approved for Food Stamp benefits utilizing this higher rent amount as an income deduction when calculating her food stamp allotment. By failing to report the accurate amount of her monthly rent obligation, defendant was issued \$4687.00 in Food Stamp benefits from November 2001 through March 2007 to which she was not entitled.

IX. DECISION:

It is the decision of this 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 claimant effective January 2008 and collection action initiated for repayment of the \$4687.00 overissuance.

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 Hearing Officer