



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 12, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held January 9, 2007.

In arriving at a decision, the State Hearing 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.

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 (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 20.2(D)(2)(e) of the WV Income Maintenance Manual and 7 CFR Section 273.16

The information which was submitted at your hearing revealed that you failed to report your husband's employment at [REDACTED]

It is the ruling of the State Hearing Officer that you did commit and intended to commit an Intentional Program Violation. You will be disqualified from participation in the Food Stamp Program for twelve months beginning March, 2007.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Danita Bragg, Repayment Investigator

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

_____,
Defendant,

v.

Action Number: 06-BOR-2836

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

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an administrative disqualification hearing concluded on January 9, 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. It should be noted that this hearing was originally scheduled for December 5, 2006. The defendant was not properly notified and the hearing was rescheduled for January 9, 2007.

It should be noted here that the defendant's benefits have been terminated.

II. PROGRAM PURPOSE:

The Program entitled Food Stamp 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 coupons to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

Danita Bragg, Repayment Investigator

It should be noted that the Defendant, _____, did not appear for the hearing. A certified restricted delivery letter was mailed to the Defendant. The letter was refused and returned to the State Hearing Officer by the USPS. The hearing was held telephonically.

Presiding at the Hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether it was shown by clear and convincing evidence that the Defendant, _____, committed and intended to commit an Intentional Program Violation.

V. APPLICABLE POLICY:

Common Chapters Manual, Chapter 700, Appendix A, Section B
Sections 1.2E and 20.2 of the West Virginia Income Maintenance Manual
7 CFR ' 273.16
7 CFR ' 273.16 (e) (6)
Chapter 700, Appendix A Part F of the Common Chapters Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Agency Form ES-FS-5 Food Stamp Claim Determination Form
- D-2 Agency Form ES-FS-5a Food Stamp Calculation Sheet
- D-3 IQFS RAPIDS Screen
- D-4 EFAD RAPIDS Screen
- D-5 Copy of CAF and Rights & Responsibilities signed 02/16/2006
- D-6 Copy of income verified through BEP System
- D-7 Copy of Income Maintenance Manual Chapter 1.2E Client's Responsibilities
- D-8 Copy of Income Maintenance Manual Chapter 20.2 Food Stamp Repayment
- D-9 Copy of Federal Guidelines, Food and Nutrition Services, USDA Section 273.16 (c)
- D-10 Copy of Case Comments dated 02/22/2006 by Stacey Brown

Correspondence:

Correspondence -1) ADH notice marked as "refused" by USPS

VII. FINDINGS OF FACT:

- 1) The Department requested this hearing be held for the purpose of determining that the Defendant committed an Intentional Program Violation (IPV). A bearing was scheduled on this matter December 5, 2006. The Defendant was sent a certified letter restricted delivery letter notifying her of the above hearing. The letter was picked up by another individual, not the Defendant. Since the Defendant was not properly notified of the hearing, the hearing date was rescheduled.

- 2) The hearing was rescheduled for January 9, 2007. On December 6, 2006 the Defendant was sent a certified letter restricted delivery notifying her of the date and time of the hearing. The letter was never picked up by the Defendant and was returned to the State Hearing Officer as "refused". (Correspondence-1) Chapter 700, Appendix A Part F of the Common Chapters Manual reads if the Department has proof of receipt or proof of refusal to accept delivery, the hearing will be held regardless of the presence of the household member.
- 3) The IFM Unit received a referral for repayment on the case of the Defendant's spouse. The reason for the referral was unreported earned income in the home due to the Defendant applying for Emergency Assistance and Food Stamps on 02/16/2006 stating her husband was not employed. At that time he was employed by [REDACTED] which was verified by an ES Supervisor. This same lack of reporting correct information has resulted in previous over issuance situations and an IPV penalty for the Defendant's spouse was obtained by him signing a Waiver of the ADH August 2001.
- 4) This same lack of reporting correct information has resulted in previous over issuance situations during reviews, applications, or when required by policy and due to the nature of this claim, it has been pursued as an Intentional Program Violation (IPV). The Defendant has opted not to sign a waiver of Administrative Disqualification Hearing (ADH).
- 5) The Defendant signed the Rights & Responsibilities and the CAF 02/16/2006. (D-5) By signing the CAF the Defendant acknowledged the following: "I understand my responsibility to provide complete and truthful information. I have reviewed or had read to me the information contained in this automated portion of the application form and I understand the information. I understand that it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits to which I am not by laws entitled. Under penalty of perjury, I certify that the statements are true and correct." The Defendant did not report that her husband was working at the time of application.
- 6) The Rights & Responsibilities form was signed by the Defendant on 02/16/06. (D-5) #45 reads "I **certify** that all statements on this form have been read by me or read to me and that I understand them. I **certify** that all the information I have given is true and correct and I accept these responsibilities." (D-5)
- 7) The food stamp application was approved 02/16/2006. (D-10)
- 8) The Department employee verified on 02/22/2006 that the Defendant's spouse was a full time salaried employee at [REDACTED] He works 37.5 hours weekly. A repayment referral was made for food stamps. (D-10) BEP data shows the Defendant's spouse was employed at WVU Tech. (D-6)
- 9) A claim has been established in the amount of \$1089.00 for the period 02/06 through 04/06. (D-1)
- 10) Section 1.2E of the West Virginia Income Maintenance Manual reads in part 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) Common Chapters Manual, Chapter 700, Appendix A, Section B, reads in part:

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.

- 12) Section 20.2 of the West Virginia Income Maintenance Manual reads 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 entitlement the AG received and the entitlement the AG should have received.

- 13) 7 CFR ' 273.16 (c) Definition of Intentional Program Violation

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 for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

- 14) 7 CFR ' 273.16 (e) (6) Criteria for determining Intentional Program Violation.

The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, Intentional Program Violation as defined in paragraph (c) of this section.

VIII. CONCLUSIONS OF LAW:

- 1) Intentional Program violations shall consist of having intentionally made a false or misleading statement or misrepresented, concealed or withheld facts.
- 2) The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an Intentional Program Violation.
- 3) The un-refuted evidence shows the Defendant did not report her husband's employment with [REDACTED] She had the opportunity to report this information on a food stamp application 02/16/2006.
- 4) The un-refuted evidence presented at the hearing shows the Defendant's spouse was working at the time she made the food stamp application.

- 5) This failure to report correct household income constitutes an intentional withholding of information. The evidence demonstrates that the defendant intended to withhold this information.

IX. DECISION:

It is the finding of the State Hearing Officer that the Defendant did commit and intended to commit an Intentional Program Violation. The Defendant will be disqualified for twelve months beginning March 1, 2007. Repayment will be initiated as policy dictates.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of January, 2007.

**Margaret M. Mann
State Hearing Officer**