



**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**

March 5, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your administrative disqualification hearing held February 28, 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 employment at _____

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 April 2007.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Kathy Carr, Repayment Investigator

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

_____,
Defendant,

v.

Action Number: 06-BOR-3201

**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 February 28, 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 18, 2006. The hearing was rescheduled at the request of the Defendant for February 28, 2007.

It should be noted here that the Defendant's benefits have been continued.

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:

_____, Defendant
Kathy Carr, Repayment Investigator

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)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Benefit Recovery Referral dated 09/27/2006
- D-2 Applications dated 04/20/2006 & 05/10/2006
- D-3 Rights & Responsibilities dated 04/20/2006 & 05/10/2006
- D-4 Personal Responsibility Contract dated 05/01/2006
- D-5 Form OFA-WVW-3A WV WORKS Initial Self-Sufficiency Appraisal dated 05/01/2006
- D-6 WV WORKS Survey dated 05/01/2006
- D-7 Statement from [REDACTED] OD, [REDACTED] dated 09/26/2006
- D-8 Case Comments dated 05/10/2006 through 05/12/2006
- D-9 Food Stamp Claim Determination
- D-10 Food Stamp Calculation Sheet
- D-11 Food Stamp Allotment Determination
- D-12 ADH Summary

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).
- 2) The IFM Unit received a referral 09/27/2006 that the Defendant came into the office and applied for Food Stamps, check and Medicaid on 04/20/2006. She reported last worked 03/06/2006 and the only income she had was \$50 child support. Started work at Appalachian Eye Care on 04/04/2006 and was working at the time of application. (Exhibit D-1)
- 3) The Defendant has been active for benefits since 1999. On 04/20/2006 the Defendant was in the office for a food stamp application reporting a two (2) person household. The only income reported child support in the amount of \$50. The Defendant signed the application certifying the statements were true and correct. (D-2)

- 4) The Rights & Responsibilities were signed by the Defendant on 04/20/2006 certifying that all the information given was true and correct and she accepted the responsibilities. (Exhibit D-3)
- 5) On May 1, 2006, the Defendant went in for WV WORKS orientation, completed and signed the WV WORKS Personal Responsibility Contract, Self-Sufficiency Appraisal, listing that she last worked in March of 2006. (Exhibits D-4, D-5, & D-6)
- 6) On May 10, 2006, the Defendant came into the office for Emergency Assistance for rent. She reported her only income was her WV WORKS check of \$301. She was denied Emergency Assistance and was offered to be referred to the Homeless Program. She stated she would talk to family and friends. There was no employment income reported. The Defendant signed the application and the Rights & Responsibilities certifying the statements were true and correct. (Exhibits D-8, D-2 & D-3)
- 7) On May 15, 2006, the Department received information that the Defendant had been working for the past two months for an eye doctor at [REDACTED]. The case was referred to the Front End Fraud Unit of OIG. It was verified that the Defendant started working at [REDACTED] on 04/05/2006 and was working at the time she applied for assistance. A statement was received from [REDACTED] dated 09/26/2006. It reads in part: "Gross wages for Defendant from April 4th, 2006 (date of hire) until August 5th, 2006 were \$2416.77." (Exhibit D-7)
- 8) A claim has been established in the amount of \$249.00 for the period 04/06 through 05/06. (Exhibits D-9, D-10, & D-11)
- 9) Testimony from the Defendant revealed that she believes that when she first went in to apply for assistance (04/20/2006) she was not working at [REDACTED]. She has no way of disproving the date listed on the letter. She had just started when her employer asked her to take some time off because of marital problems when was having at the time. She remembers when she went in to apply for Emergency Assistance she maybe had just started working a day or two. The reason she didn't mention this was her husband had her evicted from her home the same day and she didn't know what was going to happen. She didn't get approved for the Emergency Assistance and needed the WV WORKS check to get a home.
- 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 information from [REDACTED] shows the Defendant was hired 04/04/2006 and worked until 08/05/2006. She applied for benefits on 04/20/2006 and 05/10/2006. This information was not reported at either application.
- 4) The evidence shows the Defendant did not report her employment with [REDACTED] [REDACTED] Even though there is some question as to when she was first employed, the Defendant stated that she did not report this information at the time of application for Emergency Assistance, 05/10/2006, as she was concerned of where she would be living after being evicted.
- 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 April 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 5th Day of March, 2007.

Margaret M. Mann
State Hearing Officer