



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 26, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held January 16, 2007 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred.

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: 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 relating to the use presentation, transfer, acquisition, receipt or possession of Food Stamp coupons. Individuals found to have committed an act of Intentional Program Violation will be ineligible for a specified time determined by the number of previous Intentional Program Violation disqualifications. (West Virginia Income Maintenance Manual ' 20.2 and Code of Federal Regulations- 7 CFR ' 273.16).

The information submitted at the hearing revealed that you intentionally provided false and misleading information about your household composition in order to receive Food Stamp benefits.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. This disqualification will begin effective April 1, 2007.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Sally Musick, SRI, DHHR

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

_____,
Defendant,

v.

Action Number: 06-BOR-3359

**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 an Administrative Disqualification Hearing concluded on January 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. This hearing was convened on January 16, 2007.

It should be noted here that the Defendant is a current recipient of benefits through the Department.

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:

Sally Musick, State Repayment Investigator, DHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Defendant committed an intentional program violation and should be disqualified for a specified period from participation in the Food Stamp Program.

V. APPLICABLE POLICY:

7 CFR ' 273.16 USDA Code of Federal Regulations
Common Chapters Manual Chapter 700, Appendix A
West Virginia Income Maintenance Manual ' 1.2, 2.2, 9.1, 10.4 & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1	ES/FS-5 (Food Stamp Claim Determination
DHS-2	Application form completed on 9/19/06
DHS-3	EFAD (Food Stamp Allotment) screens from Rapids for 9/06 and 10/06
DHS-4	Harrison Co. Student Information form and correspondence from [REDACTED] [REDACTED] Middle School (faxed from [REDACTED] Middle School on 10/27/06)
DHS-5	DFA-RR-1 (Rights and Responsibilities) dated 9/19/06
DHS-6	West Virginia Income Maintenance Manual Chapter 1.2E and 2.2
DHS-7	IG-BR-44 and 44a
DHS-8	West Virginia Income Maintenance Manual Chapter 9.1A.2.h and 20.2

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from State Repayment Investigator, Sally Musick, on December 4, 2006. Ms. Musick contends that the Defendant has committed an Intentional Program Violation and is recommending that she be disqualified from participation in the Food Stamp Program for a period of one (1) year.
- 2) Notification of the January 16, 2007 hearing was mailed to the Defendant on December 13, 2006 via First Class Mail as the Defendant is a current recipient of benefits through the Department and resides at an address known to be good.
- 3) The hearing convened as scheduled at 9:00 a.m., and as of 9:15 a.m., the Defendant failed to appear. As set forth in regulations [7 CFR 273.16 (e) (4)], and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 700, Appendix A Part F), the hearing was conducted without the Defendant in attendance.

- 4) On or about October 27, 2006, the Defendant was notified via a Notification of Intent to Disqualify, that she intentionally violated the Food Stamp Program by reporting that her son, [REDACTED] lived with her when she completed an application on September 19, 2006.
- 5) The Department submitted Exhibits DHS-2, the Combined Application and Review Form (CAF) signed by the Defendant on September 19, 2006. This document shows that the Claimant reported [REDACTED] was residing in her home and indicated that he should be included in Food Stamp Assistance Group (AG). Exhibit DHS-3 shows that Food Stamp benefits were then issued to the Defendant based on an AG of three (3).
- 6) Department's Exhibit DHS-5, DFA-RR-1, is the Rights and Responsibilities form completed and signed by the Defendant on the day of application (September 19, 2006). The Defendant marked "yes" to item #4 which states:

I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not received 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.

By signing the DFA-RR-1, the Defendant certified that she read, understood, and accepted the Rights and responsibilities and that all of the information she provided was true and correct.

- 7) The Department cited Exhibit DHS-4, which includes a [REDACTED] County Student Information form and a letter from [REDACTED] of [REDACTED] Middle School. According to this evidence, the Defendant's son [REDACTED] entered [REDACTED] Middle School on 1/12/06 and that he resides with his father.
- 8) Exhibit DHS-1 (Food Stamp Claim Determination) was submitted to show that by providing false and misleading information about her household composition, the Defendant received \$157 in Food Stamp benefits for which she was not eligible during the period September 19, 2006 through October 30, 2006.
- 9) West Virginia Income Maintenance Manual ' 10.4:
This section contains policy relating income disregards and deductions and to computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and the number in the benefit group {emphasis added}.
- 10) West Virginia Income Maintenance Manual ' 1.2 (E):
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) West Virginia Income Maintenance Manual ' 20.2:
When a AG (benefit group) has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.
- 12) West Virginia Income Maintenance Manual ' 20.2 (C) (2):
Once an IPV (Intentional Program Violation) is established a disqualification penalty is imposed on the AG (assistance group) members who committed the IPV. The penalties are as follows: (' 9.1, A, 2, h) 1st Offense: 1 year (Disqualification)
- 13) Common Chapters Manual 700, Appendix A, provides that an 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 Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp benefits.

VIII. CONCLUSIONS OF LAW:

- 1) The evidence reveals that on September 19, 2006, the Defendant provided false and misleading information about her household composition in order to receive Food Stamp benefits for which she was not entitled. This clearly establishes intent.
- 2) The policy and regulations that govern the Food Stamp program state that a Food Stamp Program Violation has occurred when an individual intentionally makes a false or misleading statement, or misrepresented, concealed or withheld facts relating to the use, presentation, transfer, acquisition , receipt or possession of Food Stamp benefits.
- 3) There is clear and convincing evidence that the Defendant committed an intentional program violation as defined in the Food Stamp policy and regulations.
- 4) In accordance with Food Stamp policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first time offense is twelve months (one year).
- 5) Only the Defendant is subject to this disqualification. The 1-year disqualification will begin effective April 1, 2007.

IX. DECISION:

Intentionally making of false or misleading statement or misrepresenting facts to secure food Stamp benefits constitutes a clear violation of the regulations. Based on evidence presented, I find the violation intentional.

The Agency=s proposal to apply a Food Stamp disqualification is **upheld**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th Day of January 2007.

**Thomas E. Arnett
State Hearing Officer**