



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 23, 2007

Dear Mr. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 22, 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 at the time of application the total household income. This resulted in an over issuance of Food Stamp Benefits in the amount of \$120.00 for the month of September 2006.

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 April 2007.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Mrs. Debbie Roberts, Repayment Investigator

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

____,

Defendant,

v.

Action Number: 06-BOR-3493

**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 February 23, 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 Administrative Disqualification Hearing was scheduled for February 22, 2007 on a timely appeal filed January 2, 2007. The Scheduling Notice, Request for an Administrative Disqualification Hearing, and Waiver of Administrative Disqualification Hearing forms were mailed to the Defendant via First Class Mail on January 2, 2007.

The issue in this particular matter involves the Defendant, _____, intentionally withholding facts about his total household income at the time of application. He did not report additional earned income received in September 2006.

This allegedly resulted in an over issuance of Food Stamp Benefits in the amount of \$120.00. The Department is seeking a ruling of Intentional Program Violation; Disqualification from the Food Stamp Program for a period of one (1) year; and Repayment of the over issued Food Stamp Benefits.

It should be noted here that, the Defendant was receiving Food Stamp benefits at the time of 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:

Debbie Roberts, Repayment Investigator

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., 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 E Client Responsibility; 2.2 Timely Reporting; WVIMM Section Chapter 10.4 (5) (a) Applicants; 20.6 Welfare Misrepresentation; 20.2 Food Stamp Claims and Repayment Procedures; and 7 CFR 273.16 Intentional Program Violation (IPV)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

| | |
|--------|--|
| DHS-1 | Benefit Recovery Referral dated 09/29/06 |
| DHS-2 | WVIMM Section 1.2 E Client Responsibility |
| DHS-3 | Food Stamp Claim Determination |
| DHS-4 | 7CFR273.16 |
| DHS-5 | Case Comments dated 09/25/06 with attached WV WORKS Appointment Notice |
| DHS-6 | Application dated 09/25/06 |
| DHS-7 | Rights and Responsibilities dated 09/25/06 |
| DHS-8 | Wage History 08/04/06 – 09/15/06 |
| DHS-9 | WVIMM Section 10.4 (5) (a) Applicants |
| DHS-10 | WVIMM Section 2.2 B Reporting Requirements |
| DHS-11 | WVIMM Section 20.6 A Definition of Welfare Fraud |
| DHS-12 | Notification of Intent to Disqualify dated 12/05/06 |
| DHS-13 | WVIMM Section 20.2 Food Stamp Claims and Repayment Procedures |

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1. The Investigation and Fraud Management Unit received a referral that the Defendant failed to report two (2) pays received from an employer during the month of application (DHS-1).
2. West Virginia Income Maintenance Manual Chapter 1.2 E states in part (DHS-2):

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. When the client is not able to provide the required verification, the Worker must assist him. The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions: (1) Denial of the application; (2) Closure of the active AG; (3) Removal of the individual from the AG; Repayment of benefit; and Reduction in benefits
3. By intentionally failing to report the correct household income, Food Stamps were over issued for the month of September 2006 in the amount of \$120.00 (DHS-3).
4. Because of the nature of the claim, it has been pursued as an Intentional Program Violation (IPV). The Code of Federal Regulations, Sec. 273.16(c) states, "An IPV consists 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 or ATPs." (DHS-4).
5. The Case Comments dated September 25, 2006 states the Defendant signed the appointment notice to attend group orientation on September 29, 2006, and to return on October 2, 2006 to complete the WV Works application (DHS-5).
6. The Application taken on September 25, 2006 for Food Stamps lists a five person household (DHS-6).
7. The Defendant signed the Rights and Responsibilities section of the Application, acknowledging responsibility to provide correct information (DHS-7).
8. Employment verification was received showing pay received on September 1, 2006 in the amount of \$1,463.450, and another received September 15, 2006 in the amount of \$853.02 This was excessive income for the September 2006 Food Stamps. The Food Stamps were issued based upon \$0 income as reported on the application (DHS-8).
9. WVIMM Section Chapter 10.4 (5) (a) Applicants (DHS-9) states:

When:

- The first month of eligibility meets the definition of an initial month the first month following any period of time the AG was not participating; and
- An income source terminated in the month of application or in the 30 days prior to the date of application, income from this source must not be converted to a monthly amount. Instead, the worker must use the actual amount already received from the terminated source in the month of application plus the amount expected to be received from this source later in the month of application. This is the amount used as income for the month of application. Income from this source for the past 30 days or from the month of application must not be used to convert the terminated income to a monthly amount.

EXAMPLE: A client applies on September 10th, his job ended on August 31st. He was paid on that date, but still has another pay due him on September 15th. Because the income is from a terminated source, the income from this source cannot be converted. Instead, the amount already received in the month of application plus the amount expected to be received on September 15th are used to determine his eligibility and benefit level for the month of application.

10. West Virginia Income Maintenance Manual Chapter 2.2 B (3) Timely Reporting & Follow-up (DHS-10) states in part:

To determine if a claim must be established or lost benefits restored, a decision must be made as to whether or not a change was reported in a timely manner. When the client does not report in a timely manner and the change could have been made, a claim may be established. Benefits are not restored when the change which would have increased benefits is not reported within the AG's appropriate time limit.

11. West Virginia Income Maintenance Manual Chapter 20.6A (DHS-11) states in part:

Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient in obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device.

The important elements constituting an offense under this statute are that any false representation was willfully made or that any other device to obtain assistance was a misrepresentation.

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false. It is an essential element in a misrepresentation charge that the client knew his statement was false.

Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false.

12. The Repayment Investigator mailed the Notification of Intent to Disqualify and Waiver of Administrative Disqualification Hearing forms to the Defendant on December 5, 2006 (DHS-12).

13. The Repayment Investigator recommended a ruling of Intentional Program Violation, twelve month Food Stamp sanction, and repayment of the over issued Food Stamp benefits. The recommendation was based on the Defendant's receipt of Food Stamp benefits periodically since 2001, and having signed several applications and rights and responsibilities.
14. The request for sanction and repayment are in compliance with the Code of Federal Regulations (CFR) section 273.16, and West Virginia Income Maintenance Manual Chapter 20.2 (DHS-13) which states in part:

When an AG has been issued more food stamps than it was entitled to receive, corrective action is taken by establishing either and Unintentional Program Violation (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the coupon entitlement of the AG & the coupon allotment the AG was entitled to receive.
15. West Virginia Income Maintenance Manual Chapter 20.2 C (2) states in part (DHS-13):

The individual who is found to have committed an IPV is ineligible to participate in the Program for a specified time, depending on the number of offenses committed.
16. West Virginia Income Maintenance Manual Chapter 20.2 E (3) (a & b) Collection Procedures states in part (DHS-13):

A. Offsetting Lost Benefits – A claim, whether UPV or IPV, must be collected by offsetting when lost benefits are owed to the Assistance Group, but have not yet been restored.

B. Treasury Offset - Claims which have a balance of at least \$25, are delinquent and are not over 10years old are subject to referral for collection of the claim by offset of the client's federal income tax refund and any federal benefits/payments.
17. West Virginia Income Maintenance Manual Chapter 20.2 F (2) (a) states in part (DHS-13):

Current coupon entitlement after the disqualified member(s) have been removed from the AG is reduced 20% of the entitlement or \$20 whichever is greater. The reduction is based on the entitlement amount prior to the removal of the disqualified individual.
18. The Defendant intentionally withheld reporting at the time of application, the total household income.

VIII. CONCLUSIONS OF LAW:

- 1) 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.

- 2) The evidence clearly indicates the Defendant intentionally withheld reporting at the time of application, the total household income. This resulted in an over issuance of Food Stamp Benefits in the amount of \$120.00 for month of September 2006.

IX. DECISION:

It is the decision of this State Hearing Officer that the Defendant committed an Intentional Program Violation. He will be sanctioned from the Food Stamp Program for a period of 12 months effective April 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd Day of February 2007.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**