



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
PO Box 29
Grafton WV 26354
February 20, 2007

Martha Yeager Walker
Secretary

Dear Ms ____:

Attached is a copy of the findings of fact and conclusions of law on your Administrative Disqualification Hearing held January 11, 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.

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. 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 (West Virginia Income Maintenance Manual § 20.2 and Code of Federal Regulations- 7 CFR § 273.16)

The information submitted at the hearing established that you committed an Intentional Program Violation by failing to report all household income received during the period September 1998-December 2000 resulting in an overissuance of benefits.

It is the decision of the State Hearing Examiner that an Intentional Program Violation was committed and a 1 year disqualification penalty is to be applied. This disqualification will begin April 1, 2007 and applies only to the defendant.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Board of Review

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Defendant,

v. Action Number 07-BOR- 782

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

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from an Administrative Disqualification hearing concluded on February 20, 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 11, 2007.

II. PROGRAM PURPOSE:

The **Food Stamp Program** is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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

_____, defendant

Bennie Cogar, Investigator, WVDHHR

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question is whether the defendant committed an Intentional Program Violation (IPV) 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, 9.1, 10.3, 10.4, 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

D-1 - Combined Application and Review Form, 9/28/98
D-2 - Combined Application and Review Form, 1/5/99
D-3 - Combined Application and Review Form, 12/23/99
D-4 - Social Security Benefits, 9/98- 12/00, dated 7/31/01
D-5 - Record of FS issuances 9/98- 12/00
D-6 - Report of Overpayment Determination

VII. FINDINGS OF FACT:

1) An Administrative Disqualification Hearing requested by DHHR Investigator, Bennie Cogar, September 8, 2006. Notification of a December 6, 2006 hearing was mailed to defendant October 2, 2006. Notification was sent by first class mail as the agency's investigator indicated there was an active benefit case in the home. At the request of the agency the hearing was rescheduled for January 11, 2007 and the defendants notified by 1st class mail in a notification dated November 2, 2006.

2) During the hearing Exhibits as noted in Section VI above were submitted.

3) Testimony was heard from the individuals listed in Section III above who was placed under oath.

4) Testimony on behalf of the agency reveals that the defendant's household received \$3361 in Food Stamp benefits during the period 9/98- 12/00 to which they were not entitled. The defendants failed to report Social Security benefits received by a minor child who lived in the household. Case reviews were completed and signed by the defendants on 3 occasions during this period and this income was not reported. The agency recommends a 12 moth disqualification.

5) The defendants testified that they came back from [REDACTED] in 9/98 and reapplied for Food Stamps. The only thing that had changed was a son had passed away. Noted that on an asset/income sheet (attached to D-3) they left a blank space concerning public assistance - had meant child support or Social Security and was confused and meant to clarify with the worker during the interview. Alleges child's Social Security was counted for Stamp case prior to them going to [REDACTED] and that they told the agency about the Social Security payment.

6) Exhibits D-1, and D-3, Combined Application and Review Forms of 9/21/98, and 12/23/99 were completed and signed by the defendant. The consequences in failing to report accurate information were acknowledged. No Social Security income was reported from any of the non-adult members of the household

7) Exhibit D-4 – Social Security Benefits issued, 9/98- 12/00, dated 7/31/01 reveals that a minor who was a member of the benefit group received Social Security benefits during this period.

8) West Virginia Income Maintenance Manual § 1.2 (E) & (D):

The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.

The Agency's responsibilities include: inform the client of his responsibilities, the process involved in establishing his eligibility...

9) West Virginia Income Maintenance Manual § 10.4, C:

This section contains policy relating income disregards and deductions and computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and number (of persons) in the benefit group.

10) West Virginia Income Maintenance Manual § 20.2:

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 or Intentional Program Violation claim. The claim is the difference between the allotment of the AG and the coupon allotment the AG was entitled to receive.

11) 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) member(s) who committed the IPV.

12) West Virginia Income Maintenance Manual § 20.2 (C) (2):

IPV's (Intentional Program Violations) include making false or misleading statements, misrepresentations, the concealment or withholding of facts and committing any act that violates the Food Stamp Act of 1977, Food Stamp Regulations or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.

13) 7 CFR § 273.16 (e) (6) Code of Federal Regulations:

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.

VIII. CONCLUSIONS OF LAW:

1) Policy directs that the applicant has a responsibility to supply correct and accurate information in order that an accurate determination of benefit eligibility can be made. Evidence reveals that the defendant failed to report total household income during the period in question.

2) The agency has a responsibility to properly inform the applicant of his responsibilities and the penalties in failure to comply. Documents presented contain directives relating to recipient responsibilities and penalties. At the time of the aforementioned case reviews, the defendant acknowledged the accuracy of information provided and the penalties for noncompliance by signature.

3) When an individual has been issued more Food Stamps than she 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 individual received and the coupon allotment he was entitled to receive. Evidence reveals that an overissuance of Food Stamp benefits occurred during the period September 1998 through December 2000 based on unreported Social Security benefits received by the household.

4) Intentional Violations include making false or misleading statements, misrepresentations, concealing or withholding of facts or committing any act that violates the Food Stamp Act of 1977. Evidence reveals that the defendant failed to report total household income as required by policy and specifically when provided an opportunity during at least 2 case reviews. This action constitutes a withholding or concealment of facts which resulted in an overissuance of benefits- clearly a violation of the act.

5) 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. Evidence supports a finding that the defendant's concealment/withholding of information was clearly intentional. The agency provided evidence of a signed, false statement made by the defendant on the occasions of a number of case reviews. The defendant at that time acknowledged responsibilities and the resulting penalties for failure to provide accurate information.

IX. DECISION:

Based on evidence presented, I find that the defendant intentionally withheld information essential in determining Food Stamp benefit level. The making of false statements or the withholding or concealment of information to secure benefits constitutes a clear violation of the regulations. Based on evidence presented, the defendant's intent was clear and the violation intentional. The Agency's request for a one (1) year disqualification is upheld.

Only the defendant is subject to this disqualification.

This disqualification will begin April 1, 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED This 20th Day of February, 2007

RON ANGLIN
State Hearing Examiner

**For
Public Assistance Hearings,
Administrative Disqualification Hearings, and
Child Support Enforcement Hearings**

A. CIRCUIT COURT

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of Health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATE DEPARTMENT OF AGRICULTURE

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.