



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
June 28, 2007

Martha Yeager Walker
Secretary

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your Administrative Disqualification Hearing held May 30, 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 failed to establish that you intentionally committed a Food Stamp Program violation. Evidence presented failed to meet the established standard of "clear and convincing".

It is the decision of the State Hearing Examiner that an Intentional Program Violation was not proven and a 1 year disqualification penalty is not to be applied.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Board of Review
Leonard Madia, DHHR, Investigator

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Defendant,

v.

Action Number 07-BOR- 982

**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 June 28, 2007 for [REDACTED] _____. 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 May 30, 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

Leonard Madia, Investigator, DHHR

Carmella Forte, DHHR, Operations Supervisor

Levi Elza, DHHR/ESW

Michele Berry, DHHR/ESW

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 and intended to commit 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, 11.2, 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E-1 – Combined Application and Review Form with Income/Asset checklist, 5/27/05
E-2 – Statements, Chessie FCU 4/05- 12/06
E-3 - Combined Application and Review Form with Income/Asset checklist, 10/6/05
E-4 – Combined Application and Review Form with Income/Asset checklist, 4/10/06
E-5 – Combined Application and Review Form with Income/Asset checklist, 5/5/06
E-6 – Food stamp Claim Determination, 5/05- 12/06
E-7 - WVIMM 1.2, 11.3 and 11.4

D-1 – Statement from defendant's mother, no date

VII. FINDINGS OF FACT:

1) An Administrative Disqualification Hearing requested by the DHHR Investigator on March 20, 2007. Notification of May 30, 2007 hearing was mailed to defendant March 26, 2007. The hearing was convened as scheduled.

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 received an overissuance of Food Stamps totaling \$1617 during the period 5/06- 12/06. The defendant applied for benefits 5/27/05 (E-1). He failed to report part ownership of a savings account at Chessie FCU. The account was in the name of the defendant and his mother. He has total access to the account. At the time of the application the account balance was \$10,050.03. The defendant reported on the income/asset check list that he did not have a savings account. He failed to report this account on case reviews (income/asset sheet) 10/6/05, 3/7/06 and 4/10/06 as well as a Medicaid application 5/5/06. The agency seeks a 1 year disqualification. Testimony was also provided by the operations supervisor and 2 economic services workers regarding application/interview procedures.

5) The defendant testified that the savings were his mother's and not his. His name had been placed on the account as she is 80 years old and might need help with her affairs. He does not live in her home. His understanding from the application forms and interviews was that he needed to report assets that belonged to him or others in the household. The funds in question were his mother's not his. His name was placed on the account as a convenience to her. He never spent any of the funds nor had any intention to do so. He considered this money to be his mother's only. He had no income at the time and now receives disability. He was not asked during the interviews if his "name" was on any account. He reported to the agency when he began receiving disability benefits.

6) Exhibit E-1, Income/Asset check off Sheet reads in part: "Does anyone in your household have any of the following assets?" Listed in this section is "Credit union".

7) West Virginia Income Maintenance Manual 11.2 reads in part:

To be considered an asset, the item must be owned by or available to the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset. Joint ownership and the meaning of such ownership may be indicated in one of the following ways: Joint ownership indicated by "or" between the names of the owners. The asset is available to each owner in its entirety. Joint ownership indicated by "and/or" between the names of the owners. The asset is available to each owner in its entirety.

8) 7 CFR § 273.16 c, Code of Federal Regulations: 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).

9) 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) Clearly an overissuance of benefits occurred as policy provides that an account which is accessible to a recipient must be considered available and utilized in determining benefits. The value of the account in question exceeds the asset maximum for a one-person Food Stamp household.

2) Intentional Program violations shall consist of having intentionally: 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. The defendant testified that the funds in question were not his but his mother's and the arrangement was made to place his name on the account due to her advanced age and condition. He did not consider the money his or for his use. Evidence is questionable as to whether the defendant "intentionally" violated the Food Stamp act to receive benefits.

3) The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member committed, and intended to commit, an Intentional Program Violation. The agency alleged that the defendant intentionally misrepresented assets available to him to secure benefits. This presumption is neither clear nor convincing. The wording of the income/asset sheet question as to assets states: "Does anyone in your household **have** any of the following assets?" The defendant's assertion that these funds were his mother's and he answered the question correctly as stated in that he did not **have** the asset in question is not unreasonable. On this basis a finding of an intentional program violation based on "clear and convincing evidence" is not appropriate.

IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, evidence that the defendant committed an Intentional Program Violation (IPV) was found to be unconvincing. As a result of the May 30, 2007 administrative hearing, **no disqualification penalty is to be applied.**

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED This 28th Day of June 2007,

RON ANGLIN
State Hearing Examiner

**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.