



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington St.
Charleston, WV 25313
304-746-2360 Ext 2227**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

October 17, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your Food Stamp Administrative Disqualification Hearing held June 19, 2008 for the purpose of determining whether an Intentional Program Violation (IPV) was committed.

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: 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 which was submitted at your hearing revealed that the Department did not show by clear and convincing evidence that you committed an Intentional Program Violation..

It is the decision of the State Hearings Officer to reverse the proposal of the Department to impose the Disqualification.

Sincerely,

Jennifer Butcher
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Danita Bragg, RI

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

_____,

Defendant,

v.

Action Number: 08-BOR-1061

**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 a fair hearing concluded on October 17, 2008. 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 fair hearing was convened on June 19, 2008 on a timely appeal, filed November 29, 2007. The hearing had originally been scheduled for May 1, 2008 and was rescheduled at the request of the Defendant.

It should be noted here that the Defendant's benefits have been continued pending a hearing decision.

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:

Danita Bragg, State Repayment Investigator, DHHR

Presiding at the Hearing was Jennifer Butcher, 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 (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
West Virginia Income Maintenance Manual Sections 1.2, 1.4, 2.2, 9.1, 10.3, 10.4 & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp Claim Determination Form
- D-2 Food Stamp Claim Calculation Sheet
- D-3 Food Stamp Allotment screens for the months of May, 2006 through April, 2007
- D-4 Food Stamp Issuance History, Disbursements December, 2005 through November, 2007
- D-5 DFA-RR-1 Rights and responsibilities and Application dated March 7, 2006
- D-6 Social Security Administration Self-Employment Detail Screen for year 2006, dated September 11, 2007
- D-7 West Virginia Income Maintenance Manual Chapter 1.2E
- D-8 West Virginia Income Maintenance Manual Chapter 20.2
- D-9 West Virginia Income Maintenance Manual Chapter 10.4D (4)
- D-10 Federal Regulations cite 7CFR372.16(c)
- D-11 ADH Hearing Summary dated June 19, 2008

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from State Repayment Investigator, Danita Bragg, on March 18, 2008. Ms. Bragg contends that the Defendant has committed an Intentional Program Violation and is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of one (1) year.

- 2) Notification of the first hearing on May 1, 2008 was mailed to the Defendant on March 26, 2008 via certified US Mail to [REDACTED] and was received by Defendant as indicated by her signature. A request from Defendant for a reschedule was granted and set for June 19, 2008.
- 3) The hearing convened as scheduled at 1:00 pm, and as of 1:15 pm, the Defendant failed to appear. As set forth in Federal Regulations 7CFR 273.16 (e) (4) and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 740.20), the hearing was conducted without the Defendant in attendance.
- 4) The Department contends that the Defendant intentionally violated the Food Stamp Program regulations by failing to report self-employment earnings in the year of 2006 of \$7412.00 as stated in (Exhibit D-6). On April 5, 2006, the Defendant had requested closure of the TANF case when she reported she had started a job on March 21, 2006 and requested the Department to leave her Food Stamp case open. According to Exhibit D-2, the income reported in April was calculated for May 2006 Food Stamp allotment only. The evidence did not indicate what type of income or if the income ended in May, 2006.
- 5) The Department stated the Defendant called on November 26, 2007 stating she did not have self-employment income during 2006. She stated she reported this income to the IRS to become eligible for the Earned Income Child Care Credit on her taxes. The Defendant also stated she would contact the IRS and amend her return, and the Department requested a copy of the amendment for her file.
- 6) Department's Exhibit D-5, DFA-RR-1, is the Rights and Responsibilities form completed and signed by the Defendant on the day of application March 7, 2006. The Defendant marked "yes" to item #4 on page 2 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 receive 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.
- 7) 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.
- 8) West Virginia Income Maintenance Manual § 2.2 B.1.a. Simplified Reporting AG's :

All (AG) assistance groups subject to the 130% (FPL) Federal Poverty Level income reporting requirements are certified for six (6) months and must report when the total gross earned and unearned income of the AG and all other individuals who reside with the AG exceeds the AG's gross income limit. This must be

reported no later than the 10th calendar day of the month following the month in which the change occurs.

9) West Virginia Income Maintenance Manual Section 20.2:

When an AG (assistance 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

10) West Virginia Income Maintenance Manual Section 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)

11) Common Chapters Manual Section 7 740.11 D 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 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 misrepresents, conceals or withholds facts relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp benefits.
- 2) The Department's evidence did not identify the type of job the Defendant reported to whether it was the alleged self-employment or income from another source. Due to the fact the assistance group was currently in simplified reporting status, the Department could not establish when or in what increments the self-employment was allegedly received during the year. It cannot be confirmed that the assistant group received more than the 130% of the FPL in any given month, nor could it be determined whether she intentionally concealed the income.
- 3) The Department did not show by clear and convincing evidence that an IPV had occurred.

IX. DECISION:

In accordance with Food Stamp policy and regulations, an Intentional Program Violation has not been committed and a disqualification penalty will not be applied.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of October, 2008.

**Jennifer Butcher
State Hearing Officer**