



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

June 2, 2008

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 20, 2008 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred requiring a repayment of Food Stamps.

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 which was submitted at your hearing revealed that you provided the Department with false information regarding your household circumstances at your July 2007 review.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to impose an Intentional Program Violation and a repayment of Food Stamps received for which you were not eligible for.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review  
Vickie Adkins, Repayment Investigator

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

\_\_\_\_\_,  
**Defendant,**

**v.**

**Action Number: 08-BOR-1214**

**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 May 20, 2008 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 fair hearing was convened on May 20, 2008 on a timely appeal, filed April 10, 2008.

**II. PROGRAM PURPOSE:**

The Program entitled Food Stamp 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:**

\_\_\_\_\_, Defendant  
\_\_\_\_\_, Defendant's Boyfriend  
Vickie Adkins, Repayment Investigator  
\_\_\_\_\_ Jr., Witness for the Department

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Defendant committed an Intentional Program Violation and therefore be responsible for a repayment of Food Stamps.

**V. APPLICABLE POLICY:**

Code of Federal Regulations- 7 CFR ' 273.16  
West Virginia Income Maintenance Manual § 1.2, 2.2 and 20.1

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Food Stamp Claim Determination Form
- D-2 Rights and Responsibilities Form and Common Application/Review form dated July 31, 2007
- D-3 West Virginia Income Maintenance Manual § 1.2
- D-4 West Virginia Income Maintenance Manual § 20.2
- D-5 West Virginia Income Maintenance Manual § 9.1
- D-6 Case Comments from Rapids Computer System dated July 31, 2007
- D-7 Pre-Interview Screener Form dated July 31, 2007
- D-8 Case Comments from Rapids Computer System dated September 11, 2007
- D-9 Petition for Guardianship dated August 21, 2007
- D-10 Order of Appointments of Minor Guardian dated September 6, 2007
- D-11 Statements from \_\_\_\_\_ Jr., \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, and \_\_\_\_\_ and \_\_\_\_\_.

**Defendants' Exhibits:**

- C-1 School Notebook for \_\_\_\_\_ III from May 1, 2007 – June 5, 2007
- C-2 School Clothing Allowance Notification of Repayment dated February 21, 2008
- C-3 Funeral Booklet for \_\_\_\_\_ dated June 21, 2007
- C-4 Letter dated June 12, 2007 signed by Defendant and \_\_\_\_\_
- C-5 Prescription Information Leaflet for \_\_\_\_\_ III dated May 14, 2007
- C-6 Notification Letter dated September 21, 2007
- C-7 Notification Letter dated October 19, 2007
- C-8 Notification Letter dated December 4, 2007

**VII. FINDINGS OF FACT:**

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from Department of Health and Human Resources' State Repayment Investigator, Vickie Adkins, on April 15, 2008. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of one (1) year and a repayment of Food Stamps received for which she was not eligible for.

- 2) The Defendant was notified by a Notification of Intent to Disqualify letter dated February 19, 2008 that the Department had reason to believe she intentionally violated the Food Stamp program by failing to report accurate household composition at review. The result was an overpayment of \$770 in Food Stamps.

The Defendant met with Ms. Adkins for a pre-hearing conference on April 10, 2008. Defendant elected to have an administrative hearing regarding the Department's claim.

- 3) The Defendant reported at her Food Stamp review on July 31, 2007 that her household members included herself and her two (2) sons, \_\_\_\_\_ and \_\_\_\_\_ (D-2, D-7). She reported that \_\_\_\_\_ Jr. was no longer in the home (D-6).
- 4) The Department received a report on September 11, 2007 that the Defendant's children were not living with her. Defendant's Food Stamps were reduced effective November 2007 when the Department obtained the court order verifying the children were living in another household (D-8).
- 5) The Department entered into evidence a Petition for Guardianship dated August 21, \_\_\_\_\_ 2007 (D-9) for \_\_\_\_\_ and \_\_\_\_\_ by \_\_\_\_\_ Jr. and \_\_\_\_\_
- 6) The Petition read in part:

The listed minors have resided in our home at \_\_\_\_\_ [sic] on a regular basis since May of 2007. During this time span, my husband and I have provided the minors w/food, clothing, monetary funds. Also, we have provided a safe, secure, stable environment.

The Petition was signed by \_\_\_\_\_ and \_\_\_\_\_. The Defendant signed the Waiver of Guardian Appointment dated August 21, 2007 giving the \_\_\_\_\_ guardianship of her children (D-9).

- 6) The Guardianship Hearing for the children was September 6, 2007. A court order appointing the \_\_\_\_\_ as guardians for the children reads in part (D-10):

On the 6<sup>th</sup> day of September 2007, a hearing in this matter was held before the Honorable \_\_\_\_\_ Judge of this Court, upon the petition of \_\_\_\_\_ and \_\_\_\_\_ Jr. filed on the 21<sup>st</sup> day of August, 2007, seeking the appointments as guardian for the above-named minors pursuant to West Virginia Code § 44-10-3. The following persons appeared for this hearing: \_\_\_\_\_, \_\_\_\_\_ Jr. and \_\_\_\_\_.

In addition to the foregoing findings, the basis of the above determination is as follows: The above-listed minors have resided in the household of the Petitioners since May 2007. The Petitioners have provided said minors with food, clothing and monetary funds, as well as providing a safe, secure and stable environment. The Mother desire said appointments as she is in between jobs and does not have a permanent place to live at this time.

- 7) \_\_\_\_\_ testified that \_\_\_\_\_ and \_\_\_\_\_ have lived with him and his wife \_\_\_\_\_ on a full-time basis since the end of May 2007. He was sure they moved in with them in May because the children were still in school and riding the bus home to his house. He stated they took the children in because they did not have a permanent place to live. They will be returned to Defendant's custody May 22, 2008.
- 8) The Defendant testified that she approached the \_\_\_\_\_ in June 2007 about taking her children in. She was in a bad relationship at that time and did not want her children around it. She stated the children did not move in with the \_\_\_\_\_ full-time until the beginning of August 2007. She stated they may have stayed overnight at the \_\_\_\_\_ household, but denied that they were living there in May 2007.

The Defendant presented her son \_\_\_\_\_'s school notebook as evidence (C-1). In the notebook the Defendant signed off on \_\_\_\_\_'s homework assignments each day and according to her, his teach initialed it. The last date that Defendant signed the notebook was May 24, 2007.

Defendant also had a prescription information sheet for medicine prescribed for \_\_\_\_\_ on May 14, 2007 (C-5). She stated the notebook and the prescription were proof that her children were still living with her in May.

The school notebook and the prescription sheet do not definitively prove that the Defendant's children were living with her up until August 2007, as she testified, only that they were with her for part of May 2007. \_\_\_\_\_ Jr. testified that they children moved in the end of May 2007. The court order did not specify what day in May the children moved in with the \_\_\_\_\_. The Department did not contest that Defendant had her children for some time in May 2007.

- 9) Defendant stated she used the mailing address of Po Box \_\_\_\_\_, WV from July 2007 – September 2007, which was \_\_\_\_\_ and \_\_\_\_\_'s post office box. In July 2007 Defendant gave her EBT card to her ex-boyfriend, \_\_\_\_\_ Jr., to take \_\_\_\_\_ shopping for the children. \_\_\_\_\_ Jr. was still on her Food Stamp case at that time as she had not reported him out of the household yet. The children had been staying with \_\_\_\_\_ and \_\_\_\_\_ and Defendant stated she didn't want them to have to spend their own money on food for the children.

Defendant stated \_\_\_\_\_ Jr. never returned the EBT card to her telling her he lost it. At her review on July 31, 2007, Defendant reported her EBT card as lost and requested a new one. The new EBT card was sent to \_\_\_\_\_ and \_\_\_\_\_'s address. She claimed she never received the replacement EBT card. Defendant applied for School Clothing Allowance (SCA) for her children at her July 2007 review. She never received the SCA vouchers or an approval letter. Defendant contends that \_\_\_\_\_ and \_\_\_\_\_ not only spent the SCA vouchers but spent the Food Stamp allotment credited to her EBT card for August and September 2007. She requested another EBT replacement card in September 2007, after the guardianship hearing, which was sent to another address.

Defendant was originally to repay the SCA benefits (C-2) but the claim was zeroed out. The Department determined that the SCA vouchers that Defendant applied for were ultimately spent on her children and chose not to pursue a repayment for that benefit.

Defendant stated that if she did not have to repay the SCA since they were spent on the children by \_\_\_\_\_ and \_\_\_\_\_ then she should not have to repay the Food Stamps since \_\_\_\_\_ and \_\_\_\_\_ spent them on the children also.

Defendant testified that \_\_\_\_\_ Jr. must have given \_\_\_\_\_ and \_\_\_\_\_ her pin number for the EBT card. \_\_\_\_\_ Jr. would have known the pin number since he at one time received Food Stamps in her case. She said she never had her pin number changed even after reporting the EBT card lost twice saying her son \_\_\_\_\_ used it sometimes and she didn't want him to get confused.

- 10) Defendant admitted to filling out the Petition for Guardianship herself and also signing it. She stated that \_\_\_\_\_ had completed another Petition and had Defendant copy what she written onto the one they filed so it would be in Defendant's handwriting. Defendant stated she didn't notice the Petition claimed the children had been living with \_\_\_\_\_ and \_\_\_\_\_ since May 2007. She claimed she was nervous that day and afraid of losing her children permanently (D-9).

Defendant stated the reason \_\_\_\_\_ and \_\_\_\_\_ are claiming they had the children since May 2007 was because they needed them to be living with them for that long to claim them as dependants on their tax returns. Defendant stated she also claimed them on her tax returns and they are angry at her because they wanted to use her children as a tax deduction.

- 11) Code of Federal Regulations- 7 CFR ' 273.16 states:

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 coupons.

- 12) West Virginia Income Maintenance Manual § 2.2 B states:

All Food Stamp Assistance Groups (AG) must report changes related to eligibility and benefit amount at application and redetermination.

- 13) West Virginia Income Maintenance Manual § 1.2 E states:

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:

- Denial of the application
- Closure of the active AG

- Removal of the individual from the AG
- Repayment of benefits
- Reduction in benefits

14) West Virginia Income Maintenance Manual § 20.1 states:

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

### **VIII. CONCLUSIONS OF LAW:**

- 1) In order for an Intentional Program Violation to be established, it must be shown by clear and convincing evidence that the Defendant intentionally made a false statement or withheld or concealed facts from the Department.
- 2) The Department produced a court order stating \_\_\_\_\_ and \_\_\_\_\_ were residing with \_\_\_\_\_ and \_\_\_\_\_ since May 2007. Defendant was not only present at the Guardianship Hearing and did not contest the date at that time but also admitted to writing and signing the Petition for Guardianship that again stated the children were living with the \_\_\_\_\_ since May 2007. \_\_\_\_\_ Jr. offered credible testimony as to the length of time the children lived in his home. The Department has demonstrated that the Defendant willfully made false statements regarding household composition at her July 2007 review.
- 3) Defendant was required by policy to report her household circumstances correctly at her review in July 2007 and should have reported the children out of her home. Because the Defendant failed to report her children out of her home, she was issued Food Stamps for which she was not eligible for. Defendant will be responsible to repay the overissuance of Food Stamps she received from August 2007 – October 2007 in the amount of \$770.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's proposal of an Intentional Program Violation, first offense, and a repayment of Food Stamps.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 2<sup>nd</sup> Day of June, 2008.**

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**Kristi Logan  
State Hearing Officer**