



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P. O. Box 970  
Danville, WV 25053

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

June 27, 2008

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held May 27, 2008 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred.

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.

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 submitted at the hearing failed to show clearly and convincingly that you intentionally made false or misleading statements about your circumstances in order to receive Food Stamp benefits for which you were not entitled.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to apply a one (1) year Food Stamp disqualification penalty against you based on an Intentional Program Violation.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/Brian Shreve, Boone DHHR

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

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

**v.**

**Action Number: 08-BOR-1280**

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

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing concluded on May 27, 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 hearing was convened on May 27, 2008.

**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:**

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

Brian Shreve, State Repayment Investigator, DHHR

Presiding at the Hearing was Cheryl Henson, 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 and should be disqualified for one year 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, 2.2, 20.6 & 20.2

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

**Department's Exhibits:**

- D-1 Federal Regulations 273.16
- D-2 Benefit Recovery Referral Screen dated April 2, 2008
- D-3 Food Stamp Determination Forms
- D-4 Rapids Vehicle System screen dated April 1, 2008
- D-5 [REDACTED] County Sheriff's Tax Office form for Tax Year 2007
- D-6 WV State Online Query Form dated April 1, 2008
- D-7 Social Security Handbook information Section 1608 and 1609
- D-8 Social Security Handbook information Section 1611
- D-9 Case Comments
- D-10 Combined Application and Review Form dated June 26, 2007
- D-11 Case Comments
- D-12 WV Income Maintenance Manual Section 1.2
- D-13 WV Income Maintenance Manual Section 2.2
- D-14 WV Income Maintenance Manual Section 20.2
- D-15 WV Income Maintenance Manual Section 20.6
- D-16 Notification of Intent to Disqualify dated March 5, 2008

**Claimant's Exhibits:**

None

## **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' (Department) on April 3, 2008. The Department contends that the Defendant has committed an Intentional Program Violation and intentionally withheld information regarding her household composition and income in order to receive food stamp benefits, and is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of one (1) year.
- 2) On or about March 5, 2008, the Department sent the Defendant a Notification of Intent to Disqualify (D-16) form, indicating that the Department had reason to believe she violated the Food Stamp Program by intentionally violating a Food Stamp Program rule. The form also included the following:

You did not report \_\_\_\_\_ and his unearned income the household [sic]. Your household was issued to [sic] many food stamps because Mr. \_\_\_\_\_'s income was not counted.

- 3) The Defendant was actively receiving food stamps in January 2006, when she reported that \_\_\_\_\_, the father of her son, was living in her home. The Department evaluated the reported information which resulted in the termination of her eligibility for food stamps. The Defendant reapplied for food stamps in August 2006 reporting that the father of her son was no longer living in her household. The Department later investigated the reported information and determined in December 2007 that the father of her son was living in her household. They reportedly determined this by the fact that he was using the same mailing address as the Defendant as of April 1, 2008, and had a vehicle titled in his name using her mailing address on April 1, 2008. He also paid Real Property taxes using the same mailing address. The Department also found that their son receives social security benefits on the father's "record". The father is the payee for their son and uses the Defendant's mailing address for social security purposes as well. The Department added the child's father to the case effective February 2008.
- 4) The Department contends that the father of her son was living in her household all along, and she failed to report him there from August 2006 through January 2008. As evidence, they provided copies of social security regulations (D-7, D-8) they say provide that for social security purposes the payee must have custody of the individual. The Defendant indicates she has custody of the child. The Department contends that according to social security policy (D-7, D-8) the payee must be either living in the home or have custody of the individual for which benefits are received. The policy in Sections 1608, 1609 and 1611 of the Social Security Handbook (D-7, D-8) states in pertinent part:

We consider the following factors in selecting a payee:

- A. The relationship of the person to the beneficiary;
- B. The person's concern for the beneficiary's well-being;
- C. The ability of the person to act in the beneficiary's best interest;
- D. Whether the person has custody of the beneficiary; and
- E. Whether the person is in a position to know of and look after the needs of the beneficiary.

The usual order of preference in selecting a payee for a beneficiary under age 18 is:

- A. A natural or adoptive parent who has custody of the beneficiary or a court-appointed legal guardian;
- B. A natural or adoptive parent who does not have custody of the beneficiary but who demonstrates strong concern for the beneficiary's well-being.
- C. A relative or stepparent who has custody of the beneficiary;
- D. Any one of the following:
  1. A friend with custody who provides for the beneficiary's needs; or
  2. A relative or close friend who does not have custody of the beneficiary but who demonstrates concern for the beneficiary's well-being; or
  3. An authorized social agency or custodial institution.

What evidence is needed to apply to be a payee?

The payee applicant must produce documentation of his or her identity and information showing the following:

- A. The relationship to the beneficiary;
- B. Concern and responsibility for the care of the beneficiary;
- C. The availability of other potential payees; and
- D. Their SSN/EIN.

Will SSA request information after the selection?

Any time after the selection of a representative payee, we may request the payee to furnish information showing a continuing relationship to the beneficiary and a continuing responsibility for the care of the beneficiary. We will also request written reports accounting for how the funds were used.

- 5) The Department presented evidence (D-4) that shows the father of her son titled a vehicle in his name using the Defendant's mailing address as his own in April 2008. The Department also provided evidence (D-5) showing he was assessed real property taxes for tax year 2007 using

her mailing address as his own, and social security documentation (D-6) showing he receives correspondence from them at the same address. The form is dated April 1, 2008, but does not give a date to indicate how long he had been using that address as his own.

- 6) The Defendant contends that her child's father lived with her "on and off" in the past. She stated that he is an alcoholic and they have difficulty living together. She provided no proof that he lived elsewhere. She stated he has always used her mailing address as his own, but receives his social security benefits through direct deposit into his own checking account. When asked if he lived with her during the period in question, August 2006 through January 2008, she stated "for the last few months we have been steady, but before that it was not." She stated that social security has informed her that she could apply to be her son's payee, but she has not done that due to the difficulty of having to travel to Logan or Charleston to complete the paperwork.
- 7) West Virginia Income Maintenance Manual ' 1.2 (E) states that it is the client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 8) West Virginia Income Maintenance Manual ' 20.2:  
  
When a 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.
- 9) 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) members who committed the IPV. The penalties are as follows: ( ' 9.1, A, 2, h) 1st Offense: 1 year (Disqualification)
- 10) Common Chapters Manual 700, Appendix A, Section B, 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.
- 11) Common Chapters Manual 700, Appendix A, Section G, states that the State Hearing Officer 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 as defined in Section B of this Appendix.

### **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 misrepresented, concealed or withheld facts relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp benefits.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 3) The Department has failed to provide clear and convincing evidence to demonstrate the Defendant committed an Intentional Program Violation. The evidence provided shows that the child's father used the same mailing address as the Defendant in recent months, but does not address the period in question, that being August 2006 through January 2008. The evidence provided regarding Social Security's guidelines for selecting payees shows that they do "consider" whether the person has custody of the beneficiary, but does not preclude a non-custodial parent from being the payee. No clear evidence was provided by either party to show where the child's father lived during the period in question, and therefore no determination can be made as to the Defendant's statements in this regard.

### **IX. DECISION:**

The Agency's proposal to apply a one (1) year Food Stamp disqualification is hereby **reversed**.

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

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 27th Day of June, 2008.**

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**Cheryl Henson  
State Hearing Officer**