



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704**

**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 the Food Stamp Administrative Disqualification Hearing held July 2, 2008 for the purpose of determining whether an Intentional Program Violation (IPV) was committed by you.

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)

Information submitted at the hearing reveals that you intentionally provided false and misleading information about your household income in order to receive Food Stamp benefits for which you were not entitled.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. Your disqualification from the Food Stamp program will begin effective December 1, 2008.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Karen Nelson, Repayment Investigator

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

_____,
Defendant,

v.

Action Number: 08-BOR-1345

**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 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 July 2, 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
Karen Nelson, Repayment Investigator

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The questions to be decided are 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, Chapter 1.2
West Virginia Income Maintenance Manual, Chapter 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp Claim Determination (ES-FS-5) for _____
- D-2 Combined Application and Review Form (CAF) dated January 13, 2006
- D-3 Case Comments dated December 12, 2005 through April 3, 2006
- D-4 Wage Verification for [REDACTED]
- D-5 Rights and Responsibilities Form (DFA-RR-1) dated January 13, 2006
- D-6 West Virginia Income Maintenance Manual, Chapter 1.2; Chapter 2.2
- D-7 West Virginia Income Maintenance Manual, Chapter 9.1; Chapter 20.2

VII. FINDINGS OF FACT:

- 1) The Department contends that there has been an overissuance in Food Stamps (Exhibit D-1) in the Defendant's case, and this Administrative Disqualification Hearing was requested to determine if the alleged actions of the Defendant constitute an Intentional Program Violation.
- 2) The Code of Federal Regulations, 7 CFR §273.16(c), defines an Intentional Program Violation (IPV) as:
 - (c) 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).

- 3) The Department presented wage verification for Dawn Drown, the Defendant's mother (Exhibit D-4). This screen print showed that the Defendant's mother was employed by both [REDACTED] Shelter and the [REDACTED] County Commission from the fourth quarter of 2005 through the third quarter of 2006. Testimony from the Department confirmed that the Defendant was receiving Food Stamps during that period, and was including her mother in her Food Stamp case.
- 4) The Department presented a Combined Application and Review Form (CAF) from her January 13, 2006 review (Exhibit D-2). This application was signed by the Defendant and did not include her mother's earnings from employment with [REDACTED] Shelter and the [REDACTED] County Commission.
- 5) The Department presented screen prints of Case Comments (Exhibit D-3) entered by the Department worker from December 12, 2005 through April 3, 2006. The comments from January 13, 2006 – when the Defendant completed her Food Stamp review - state, in pertinent part:

CLIENT CAME IN FOR REVIEW. 3 IN HH [sic] WHICH CONSISTS OF [REDACTED] HER CHILD AND HER MOTHER. [REDACTED] MOTHER STAYS HOME WITH THE CHILD.

Although the comments suggest that the Defendant's mother was not employed at the time of review – since she was reported to be providing child care for the Defendant – further comments from February 1, 2006 indicate that a supervisor for the Department asked the Department worker to follow up with a phone call to verify that there was no other income in the household. Comments entered by the Department worker on February 3, 2006 state, in pertinent part:

[REDACTED] LEFT MSG [sic] ON MY VOICEMAIL ON 2/1 TO ADVISE ME THAT HER MOTHER DOESNT [sic] HAVE INCOME.

The Defendant testified that the Department did not call her, leave a phone message, or receive a return call from her.

- 6) The Department presented the Rights and Responsibilities Form (Exhibit D-5) completed and signed by the Defendant at her January 13, 2006 review. In addition to explaining reporting requirements for the Food Stamp program and stating the penalties for committing an IPV, this document concludes with the statement:

I certify that all statements on this form have been read by me or read to me and that I understand them. **I certify** that all information I have given is true and correct and I accept these responsibilities.

- 7) The West Virginia Income Maintenance Manual, Chapter 9.1, A, 2, h, states:

h. Intentional Program Violation (IPV)

Persons who have been found guilty of an IPV are disqualified as follows:

- 1st offense: 1 year
- 2nd offense: 2 years
- 3rd offense: Permanent

- 8) Testimony from the Defendant contended that the Department was aware of earned income for her mother because of a letter from her mother submitted by the Defendant to clarify shelter and utility expenses in November 2005. She stated that she reported her mother's earned income at the January 13, 2006 Food Stamp review, but did not deny that she signed the documents (Exhibits D-2 and D-5) from that review that omit the income.
- 9) Additional testimony from the Defendant explained that her mother and her son had been "in the system" for years, and she did not understand how the Department could not be aware of her mother's income. Upon clarification from both the Defendant and the Department, it was discovered that the Defendant's mother received SSI Medicaid for the Defendant's son while they were residing together without the Defendant. The Department explained that although SSI Medicaid is not a program that requires or considers the income of a relative, the Food Stamp program considers the income of the entire household.

VIII. CONCLUSIONS OF LAW:

- 1) The Department clearly showed that the Defendant withheld earnings information for her household. The wage verification for the Defendant's mother shows earnings at the same time that no earned income was reported by her during a Food Stamp review. Case comments were used to show that the Department made a follow up attempt to verify household income. The Defendant disputed the veracity of these comments, but a follow up was not necessary with a signed application form from the Defendant.
- 2) The Department also clearly established the intent of the Defendant to make a false statement for the purpose of receiving Food Stamps to which she would not have otherwise been entitled. The Department showed that the Defendant signed the Combined Application and Review Form and the Rights and Responsibilities form

certifying the information she provided as true and correct. However, her mother's earned income was not reported on the review form, and earnings for the Defendant's mother were later verified to be ongoing at the time of that review. The Department determined that these actions caused an overissuance in the Defendant's Food Stamp benefits. With clear and convincing evidence, the Department has shown an intentional withholding of information on the part of the Defendant to receive Food Stamps that she was not entitled to receive, and was correct in its determination that an IPV was committed by the Defendant.

IX. DECISION:

Intentionally making a false or misleading statement or misrepresenting facts to secure food Stamp benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Agency's proposal to apply a Food Stamp disqualification is **upheld**. The Defendant will be disqualified from the Food Stamp program for a twelve (12) month period to begin effective December 1, 2008.

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.

Todd Thornton
State Hearing Officer