



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 1736  
Romney, WV 26757

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

August 19, 2008

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

Dear Mr. \_\_\_\_\_,

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 29, 2008. Your hearing was based on the Department of Health and Human Resources' claim that you had committed an intentional program violation of the Food Stamp program.

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: For the purpose of determining, through an administrative disqualification hearing, whether or not a person has committed an intentional program violation, the following criteria will be used: 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 regulations, or any statute relating to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamp benefits. (Section B. Appendix A, Chapter 700 of Common Chapters Manual) Individuals found to have committed an intentional program violation shall be ineligible to participate in the Food Stamp Program for a fixed period of time as explained in section 9.1,A,2,g of the WV Income Maintenance Manual and 7 CFR Section 273.16 .

The information submitted at your hearing did conclude that you committed an intentional program violation by withholding information regarding your employment.

It is the decision of the State Hearings Officer to **uphold** the proposed action of the Department to apply a Food Stamp Sanction to your case for an intentional program violation.

Sincerely,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

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

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

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

**v.**

**Action Number: 08-BOR-1349**

**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 a hearing concluded on August 19, 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 Administrative Disqualification hearing was convened on July 29, 2008 on a request, filed by the Agency on July 2, 2008.

It should be noted here that any adverse action of the agency has been postponed pending a hearing decision. The Defendant did not appear for the hearing after being properly notified of the hearing date and time. The hearing was held in his absence.

**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 food stamp benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

### **III. PARTICIPANTS:**

Karen Crossland, Repayment Investigator

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether it was shown by clear and convincing evidence that the defendant has committed an act of intentional program violation.

### **V. APPLICABLE POLICY:**

Common Chapters Manual, Chapter 700, Appendix A, Section B  
7 Code of Federal Regulations Section 273.16  
West Virginia Maintenance Manual Section §1.2, 1.4, 9.1; and 20.2

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

#### **Department's Exhibits:**

- D-1 Food Stamp Claim Determination
- D-2 Verification of employment and earned income
- D-3 Application & Rights and Responsibilities signed by defendant dated Dec. 21, 2006
- D-4 Application & Rights and Responsibilities signed by defendant dated Jan. 31, 2006
- D-5 WV Income Maintenance Policy 1.2
- D-6 WV Income Maintenance Policy 2.2
- D-7 WV Income Maintenance Policy 9.1
- D-8 WV Income Maintenance Policy 20.1

### **VII. FINDINGS OF FACT:**

- 1) The Defendant was in the [REDACTED] County DHHR office on December 21, 2006 to complete and application for Emergency Assistance. During this application process, the Defendant read and acknowledged that he understood his rights and responsibilities to report accurate benefits and the possible result of not doing so. At this application, he reported that the only income in the household was his Unemployment benefits.
- 2) On January 30, 2007, the Defendant completed a review of his Food Stamp benefits and again reported that the only income in the home was his Unemployment benefits. He again was reminded of his rights and responsibilities. He acknowledged that he understood that if he were found to have committed an act of intentional program violation, he would not receive Food Stamp benefits as follows: First Offense – one

year; Second Offense – two years; Third Offense – permanently. He also was advised that he would have to repay any benefits received for which he was not eligible.

- 3) Exhibit D-3 verifies that the Defendant began employment on December 14, 2006 and received his first pay from this job on December 22, 2006. He continued this employment until March 7, 2007. He earned gross income in February of \$787.50 and \$1246.50 in March. As of the January 30, 2007 Food Stamp review, the Defendant had earned \$2,663.74 from this employment.
- 4) The Department became aware of this unreported employment and referred the case to the Claims and Collections unit. The Repayment Investigator obtained the employment verification from the employer and established a Food Stamp overpayment claim. This claim was based on the verified earnings as well as the reported Unemployment benefits, which the Defendant had reported he was receiving.
- 5) The Repayment Investigator for [REDACTED] County requested this Administrative Disqualification Hearing to confirm that the Defendant had committed a Food Stamp violation for failing to report his employment and earned income.
- 6) The Defendant was advised of the date and time for this hearing and he failed to appear. The Repayment Investigator testified that this was the client's first violation of Food Stamp program rules.
- 7) **WV Income Maintenance Manual Policy § 1.4, states:** Individuals who have committed an Intentional Program Violation (IPV) are ineligible for a specified time, determined by the number of previous (IPV) disqualifications.
- 8) **WV Income Maintenance Manual Policy § 20.2 states:** Intentional Program Violations include making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.
- 9) **According to Common Chapters Manual, Chapter 700, Appendix A, Section B,** an intentional program violation consists of having intentionally made a false statement, or misrepresented, concealed or withheld facts, or committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons.
- 10) **According to policy in WV Income Maintenance Manual Section 9.1,A,2,g,** the disqualification penalty for having committed an Intentional Program Violation is twelve months for the first violation, twenty-four months for the second violation, and permanent disqualification for the third violation.
- 11) **7 Code of Federal Regulations Section 273.16 states:**

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).

12) **WV Income Maintenance Manual Policy §1.2**

The Client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.

**VIII. CONCLUSIONS OF LAW:**

- 1) Chapter 20.2 of the Income Maintenance Manual clearly provides that an Intentional Program Violation includes the concealing or withholding of facts. The Defendant clearly withheld information regarding his new employment during his Emergency Assistance application on December 21, 2006. He again withheld this information during his Food Stamp review on January 30, 2007 after he had earnings of \$2,663.74 from this employment.
- 2) Policy 1.4 and 9.1 stipulates that if an intentional program violation has been committed, a disqualification penalty must be applied. The disqualification for a first time offense is twelve months.
- 3) Exhibit D-3 and D-4 clearly support that the defendant was made aware of his rights and Responsibilities as a recipient of Food Stamp benefits. His signature confirms that he was fully aware that he was obligated to provide accurate information.
- 4) Evidence and testimony is clear and convincing that the Defendant has committed an intentionally program violation by withholding information regarding his employment and earned income.
- 5) The Claims and Collection unit calculated the dollar amount of the overpayment using both the reported Unemployment benefits and the unreported earned income. This Hearings Examiner was not provided verification of the Unemployment benefits and therefore, will not rule on the accuracy of the claim amount. If this Defendant was being paid (under the table), it is possible that he was receiving both incomes during the months of February and March.

**IX. DECISION:**

It is the finding of this Hearing Officer that the defendant did commit an intentional program violation, IPV. It is the ruling of this Hearing Officer to **uphold** the Department's proposed action to impose a 12-month sanction for this IPV. This sanction is to begin on October 1, 2008.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 19th Day of August 2008.**

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**Sharon K. Yoho**  
**State Hearing Officer**