



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

August 15, 2008

Dear Ms _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 8, 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 failed to demonstrate the intent to willfully misrepresent your household circumstances in order to obtain Food Stamps.

It is the decision of the State Hearings Officer to **reverse** the Department's proposal of an Intentional Program Violation and a repayment of Food Stamps.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Danita Bragg, Repayment Investigator

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

_____,
Defendant,

v.

Action Number: 08-BOR-1588

**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 August 8, 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 August 8, 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
Danita Bragg, Repayment Investigator

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 or not an Intentional Program Violation occurred requiring a repayment of Food Stamps.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 2.2 B
Code of Federal Regulations- 7 CFR ' 273.16

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 Determination (EFAD) Screen from Rapids Computer System
- D-4 Food Stamp Issuance History/Disbursement (IQFS) Screen from Rapids Computer System
- D-5 Combined Application Form and Rights and Responsibilities Form dated March 1, 2007
- D-6 Deed and Tax Records for [REDACTED] Subdivision, Disbursement of [REDACTED]'s Estate and Tax Records for [REDACTED] Subdivision
- D-7 Civil Summons for Wrongful Occupation dated November 2, 2007
- D-8 Statements from [REDACTED] dated August 1, 2007 and November 9, 2007 and a Statement from [REDACTED] dated November 9, 2007
- D-9 West Virginia Income Maintenance Manual § 1.2 E
- D-10 West Virginia Income Maintenance Manual § 20.2
- D-11 Article 273.16(c) of the Federal Register
- D-12 Department's Case Summary

Claimants' Exhibits:

- C-1 Title for a 1997 Fleetwood Mobile Home, Bill of Sale for the 1997 Fleetwood Mobile Home dated October 19, 2004, Copy of Cashier's Check for the Purchase of the 1997 Fleetwood Mobile Home dated October 24, 2004
- C-2 Order of Possession/Removal of Wrongful Occupation of Residential Rental Property dated November 9, 2007
- C-3 Real Property Tax Ticket for [REDACTED] Subdivision
- C-4 Copies of Rent Receipts for [REDACTED] dated March 1, 2008 and August 1, 2008

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, Danita Bragg, on June 19, 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 April 15, 2008 that the Department had reason to believe she intentionally violated the Food Stamp program by failing to report rental income at reapplication. The result was an overpayment of \$705 in Food Stamps.
- 3) The Department contends that Defendant has two (2) mobile homes that she rents out and receives rental income of \$300 monthly from one and \$450 monthly from the other. Defendant failed to report this income at her Food Stamp reapplication on March 1, 2007.
- 4) The Department presented tax documents showing Defendant as being the owner of two pieces of property, [REDACTED] Subdivision and [REDACTED] [REDACTED]. Her homestead property is [REDACTED] and [REDACTED] lists a mobile home on the property (D-6).

A Civil Summons for Wrongful Occupation of Residential Rental Property or Factory-Built Home Site dated November 2, 2007 was also submitted for evidence. The Summons was filed by Defendant against _____. The complaint section of the Summons states (D-7):

[REDACTED] has not paid rent since June 2007 until present. Her rent is \$300 a month. She is not currently staying there but her stuff is still there.

Past due rent payment in the amount of \$1800

- 5) A statement obtained by _____ dated November 9, 2008 states (D-8):

I have lived here since December 2006 with my two children. I rent this trailer from _____. I pay \$300 per month to _____. The rent does not include utilities. I have not paid rent since June 2007 and I have an eviction hearing tonight at 5:30 pm at the Magistrate Court in [REDACTED] WV. I will fax a copy of the eviction notice to Mr. _____ on Monday November 12, 2007 to attach to the statement. _____ is my aunt. _____ also rents this trailer beside me to "_____" and "_____" and their three children.

- 6) A statement was obtained by _____, Ms. _____'s neighbor, dated November 9, 2008 (D-8) and states:

I rented my trailer approx. January 2007 from _____ [sic]. She lives at bottom of [REDACTED] and drives a white Jeep. I paid \$400 sec[urity] dep[osit] in addition to my monthly rent of \$450. Rent does not include utilities. _____ comes and picks up the rent from me here at the trailer every month. I have her sign my rent receipt book for my records. _____ signs her son's name on the receipt. I verbally agreed for _____ to take this statement by telephone.

- 7) The Department contends that Defendant has been a Food Stamp recipient since 1997 and is aware of the need to report accurate information. The Defendant did not report the rental income at reapplication on March 1, 2007 that she had been receiving since at least December 2007.
- 8) The Defendant testified that she does own two pieces of property. [REDACTED] is her homestead property and [REDACTED] she inherited from her father when he died. There are two mobile homes on [REDACTED]. The mobile home that Ms. [REDACTED] had lived in is a 1972 model that is still in her father's name. This mobile home came with the property she inherited. The other mobile home is a 1997 Fleetwood that is owned by her son, [REDACTED]. Her son, not her, rents this trailer out to [REDACTED] and [REDACTED] for \$450 a month.

Defendant produced the title and bill of sale for the 1997 mobile home as evidence which was purchased in October 2004 by [REDACTED] (C-1). She stated she helps her son with his finances as he has a learning disability. He sometimes works out of town so she has collected rent for him in the past. When she does this, she signs her son's name to the rent receipts because he is the landlord. Defendant had the carbon copies of rent receipts to [REDACTED] for March 2008 and August 2008 signed by Mr. [REDACTED] (C-4).

- 9) Defendant stated her niece, [REDACTED], approached her in December 2006 and asked to live in the 1972 mobile home. Defendant stated the 1972 mobile home is run down and not in livable condition. However, Ms. [REDACTED] was waiting for her HUD approval and had nowhere to go. She agreed to let her live there for free until she received her HUD approval in February 2007.

Defendant stated Ms. [REDACTED] was approved for her HUD in February 2007 but failed to look for a place to live. At the end of the first week in March 2007, Defendant told Ms. [REDACTED] that if she still wished to live there, she would have to start paying her rent of \$300 a month. Defendant stated she thought that by telling Ms. [REDACTED] she would have to start paying rent would motivate her to find her own place, especially since she already had her HUD certificate. However, Ms. [REDACTED] agreed to start paying Defendant rent. Ms. [REDACTED] paid rent of \$300 for March 2007, April 2007 and May 2007. Ms. [REDACTED] stopped paying rent after May 2007.

- 10) Ms. [REDACTED] remained in Defendant's trailer until November 2007 when Defendant filed for Wrongful Occupation petition. Defendant was awarded rent arrears of \$1800, for June 2007, July 2007, August 2007, September 2007 and November 2007 and court costs of \$85. Ms. [REDACTED] was ordered off the property by November 15, 2007 (C-2). Defendant stated she has not received this money yet.

Defendant testified that the reason she had Ms. [REDACTED] evicted was because she never did find a HUD approved place to live and after six (6) months she finally lost her HUD. She was trying to help her niece out in the first place by letting her live there until the HUD came through, but felt that Ms. [REDACTED] took advantage of her and Defendant gave her the motivation to take care of her affairs. She felt like Ms. [REDACTED] was angry with her over the eviction and was trying to get back at her.

- 11) Defendant stated she did not approach Ms. _____ about paying rent until after her reapplication in March 2007. She really thought Ms. _____ would move out after being asked to pay \$300 a month for the run down trailer and did not anticipate this income. She did not report the rental income from Ms. _____ because of simplified reporting policy and the rental income would not have made her ineligible to receive any Food Stamps.

- 12) West Virginia Income Maintenance Manual § 2.2 B(1)b states:

All other Assistance Group's (AG) which do not meet the requirements in 1,a for a 24-month certification [eldery/disabled AG's] are certified for 6 months. For this group, changes which occur between interview and approval must be reported and acted on prior to approval. Once approved, these AG's 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.

No other changes are made for these AG's unless the information is reported by an AG member, comes from a source which is verified upon receipt, or from a source which is considered reported.

- 13) 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.

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) Defendant presented evidence that the 1997 mobile home on her property belongs to her son who rents it out for \$450 a month. Defendant does collect rent from his tenants for him occasionally. Although the mobile home does sit on her property, the rental income generated from the mobile home belongs to her son and should not be attributed to her.
- 3) Defendant gave testimony that she did not start charging rent for the 1972 trailer from Ms. _____ until sometime in March 2007, which would have been after her Food Stamp reapplication. Defendant would not be required to report any household changes after certification unless the household's income exceeded the gross income limit for Food Stamps.

- 4) The Department failed to show by clear and convincing evidence that Defendant's rental income started prior to her Food Stamp reapplication or her intent to withhold accurate information from the agency.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's proposal of an Intentional Program Violation and 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 15th Day of August, 2008.

**Kristi Logan
State Hearing Officer**