



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

August 4, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held July 29, 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 demonstrate 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-1605

**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 August 4, 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 August 4, 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, & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Federal Regulations 273.16
- D-2 Benefit Recovery Referral Screen dated June 9, 2008
- D-3 Food Stamp Determination Forms
- D-4 Case Comments from Rapids
- D-5 Employment data information
- D-6 Employment data information
- D-7 Combined Application Form dated June 1, 2006
- D-8 Case Comments from Rapids
- D-9 WV Income Maintenance Manual Section 1.2
- D-10 WV Income Maintenance Manual Section 2.2
- D-11 WV Income Maintenance Manual Section 20.6
- D-12 Notification letter dated April 11, 2008
- D-13 ADH Hearing Summary

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 June 10, 2008. The Department contends that the Defendant has committed an Intentional Program Violation and made a fraudulent statement or misrepresentation regarding her household 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 April 11, 2008, the Department sent the Defendant a Notification of Intent to Disqualify (D-12) 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 failed to report your earned income
() in the household. The earned
income was counted in determining your household food
stamp allotment.
- 3) The Department presented evidence to show that on June 1, 2006 the Defendant was actively receiving food stamps as a "simplified reporting" case, when she completed a review (D-7) for food stamps and reported Unemployment Compensation income for her husband as the only household income. The Department contends the Defendant was working for _____ at the time and intentionally failed to report the income during the review.
- 4) The Defendant reported the earned income at the next contact with the Department. She applied for Low Income Energy Assistance in November 2006 and reported the earnings. The Department closed her food stamp case at that time. The Department submitted evidence in the form of an Employer's Statement (D-5) that indicates the Defendant began work for _____ during the month of May 2006 and earned \$500.00 during that month. It is not clear when the Defendant was actually paid. The Defendant earned \$1000.00 in June 2006. This verification shows that the Defendant was paid varying amounts monthly through March 2008.
- 4) The Department contends that the Defendant was aware of the earnings on June 1, 2006 when she completed the review and intentionally withheld the information. They point to the case comments (D-8) made by the case worker indicating that the Defendant reported no earned income, and unearned income for her husband in the form of Unemployment Benefits. The Combined Application Form (D-7) does not indicate whether the question regarding earned income was asked or answered. The Employer's Statement (D-5) does not give a specific date

for payment. It only lists a month and year of payment. The Department's evidence (D-6) of employment record for the husband from the same company is in conflict with the report of Unemployment Benefits paid to him for the same time frame, which calls into question the accuracy of this evidence.

- 5) The Defendant contends that she reported everything she was supposed to during the June 1, 2006 review. She states that when she first began work for the company she was told that it was to be a "contract job" and she was going to be painting a house for her employer. She states the employer told her the job would not continue. She does not recall exactly when she received her first pay. She stated that if she had been paid before the June 1, 2006 review she would have reported it. She clearly reported the income at the next contact with the Department.
- 6) 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.
- 7) 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.
- 6) 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)
- 8) 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.
- 14) 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 totality of evidence presented during the hearing does not clearly and convincingly show that the Defendant intentionally committed an Intentional Program Violation.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of August, 2008.

**Cheryl Henson
State Hearing Officer**