



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
PO Box 6165
Wheeling, WV 26003

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 July 28, 2008. Your hearing was based on the Department of Health and Human Resources' proposal that you committed an Intentional Program Violation.

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 Stamps is based on current policy and regulations. Some of these regulations state as follows: 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.

The information submitted at your hearing revealed: You intentionally reported false information concerning the residency of your oldest son in the month of October and November 2007. Your son was residing at George Jr. Republic during those months and you filed an application for food stamp benefits including him in your household. This resulted in an over issuance of Food Stamp benefits.

It is the decision of the State Hearings Officer to **UPHOLD** the **PROPOSAL** of the Department that you committed an Intentional Program Violation. You will be sanctioned from the Food Stamp Program for a period of twelve (12) months. The sanction will be effective September 2008. You will also be required to repay the food stamp benefits over issued to you for the time period of October 2007 through November 2007.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Teresa Smith, Repayment Investigator

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

_____,
Defendant,

v.

Action Number: 08-BOR-1625

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

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing concluded on July 28, 2008 for Ms. _____. 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. Notification of the July 28, 2008 hearing was mailed to the Defendant on June 26, 2008 via First Class Mail as the Defendant is a current recipient of Food Stamp benefits and resides at an address known to be good by the Department.

It should be noted here that the Defendant was present during the hearing.

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
Teresa Smith, Repayment Investigator

Presiding at the Hearing was Melissa Hastings, 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, _____, committed an intentional program violation.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 9.1 (A) (2) (f); Common Chapters Manual, Chapter 700, Appendix A, Section B ; WV Income Maintenance Manual Section 1.2 E; WV Income Maintenance Manual Section 1.4 L; WV Income Maintenance Manual Section 203.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1	School Clothing Allowance Application dated 07/10/07
DHS-2	Food Stamp Application dated 10/04/07 with Rights and Responsibilities signed by Defendant 10/04/07
DHS-3	Customer Questionnaires signed by defendant on 10/04/07 and 10/29/07
DHS-4	E mail message dated 10/30/07
DHS-5	Case Comments dated 10/04/07 through 10/30/07
DHS-6	Food Stamp Claim Determination (ESFS5) for time period 10/07 through 11/07
DHS-7	Notification of Intent to Disqualify (IGBR44a dated 11/21/07 with a Waiver of Administrative Disqualification Hearing (IGBR44B) attached
DHS-8a	WV Income Maintenance Manual Section 1.2E Client Responsibility
DHS-8b	WV Income Maintenance Manual Section 1.4L Repayment and Penalties
DHS-8c	WV Income Maintenance Manual Section 9.1g and h Individuals Excluded by Law
DHS-8d	WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures
DHS-8e	Common Chapters Manual Chapter 700 Appendix A, Section B
DHS-9	Request for an Administrative Disqualification Hearing (IG-BR-30) dated 06/19/08
DHS-10	Hearing Summary (IGBR31) dated 07/25/08

Claimants' Exhibits:

None

II. FINDINGS OF FACT:

- 1) Common Chapters Manual, Chapter 700, Appendix A, Section B, indicates an intentional program violation consists of having intentionally made a false statement, or misleading 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.
- 2) WV Income Maintenance Manual Section 9.1 (A) (2) (f) indicates 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.
- 3) WV Income Maintenance Manual Section 1.2 E Client Responsibility indicates that it is the client's responsibility to provide information about his circumstances so the Worker is able to make a correct decision about eligibility.
- 4) WV Income Maintenance Manual Section 9.1 A Food Stamp Eligibility Determination Groups indicates that the Food Stamp AG must include all eligible individuals who both live together and purchase and prepare their meals together.
- 5) WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures indicates when an assistance group has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing an Intentional Program Violation claim.
- 6) Testimony and documentary evidence received from the department's representative during this hearing indicated that the Defendant was in the local DHHR Office on October 4, 2007 and completed a review for Food Stamp Benefits (**DHS2**). She signed the Rights and Responsibilities section of the application acknowledging Question #4 which states, "I understand if I am found to have committed an act of intentional program violation, I will not receive Food Stamp benefits as follows: First Offense – one year; Second Offense – two years; Third Offense-permanently. In addition, I will have to repay any benefits received for which I was not eligible."
- 7) Testimony and documentary evidence from the department's representative indicates that the Defendant included herself and her three children as household members (**DHS2**).
- 8) Testimony from the department's representative indicates that as a result of this application the Defendant was recertified for food stamp benefits for a household of four.
- 9) The Defendant completed Customer Questionnaires (**DHS3**) on October 4, 2007 and October 29, 2007 in which she listed herself and three children as residing in the home.
- 10) Testimony from the department's representative indicates that on October 30, 2007 the Economic Service Worker received notification from Child Protective Services (**DHS4**) that the Defendant's oldest son was not living in her home and had not been in the home since May 21, 2007. The child in question had been in placement at various child care

institutions from May 21, 2007 to the present. Upon receiving this notification the agency notified the Defendant of the reduction of food stamp benefits that would result from removing the child from the household. This change in benefits took place effective December 2007.

- 11) Testimony provided by the Defendant during this hearing was contradictory. Initially she indicated she had told the worker interviewing her for benefits in October that her son was in placement at the [REDACTED] but was going to be going to court to determine if he could come home. She indicated through her testimony that the worker interviewing her told her she'd include the child and they would see what happened in court. Later in the hearing however when confronted with information from the Protective Service Worker's memo to the Economic Service Worker that the child in question was in [REDACTED] from May 21, 2007 until July 1, 2007 and was at [REDACTED] in October, the Defendant changed her testimony to indicate that this conversation with the worker interviewing her took place in July 2007 when she applied for the School Clothing Allowance. The Defendant's testimony also indicated that she felt the department's Protective Service Worker was aware of where her son was and he should have reported it to the Economic Service Worker. The Defendant's testimony also indicated that even though her son was in placement she took him food all of the time and utilized the food stamp benefits for him.
- 12) Repayment Investigator, Teresa Smith, prepared Food Stamp Claim Determination form ESFS5 (DHS6) indicating Defendant received \$220 in excess food stamps from October 2007 through November 2007. This overissuance calculation was based on the fact that Defendant received food stamps for a four person household when she should have received food stamps for a three person household.

VIII. CONCLUSIONS OF LAW

- 1) Common Chapters Manual section 700 provides a definition for a food stamp intentional program violation. Intentionally providing inaccurate information to receive food stamp benefits to which an individual is not entitled meets the definition for consideration for an intentional program violation.
- 2) WV Income Maintenance Manual Section 1.2 indicates that it is the customer's responsibility to provide accurate information to the agency for a proper eligibility determination to be made.
- 3) WV Income Maintenance Manual Section 1.4 indicates that anyone found to have committed an Intentional Program Violation is ineligible for a specified time, determined by the number of previous disqualifications.
- 4) WV Income Maintenance Manual Section 9.1 indicates the food stamp assistance group must include all eligible individuals who both live together and purchase and prepare their meals together. This section also identifies the disqualification periods for intentional program violations as:

1 st offense	1 year
2 nd offense	2 years

3rd offense Permanent

- 5) Evidence and testimony received during this hearing are clear that the Defendant provided inaccurate information concerning the living arrangements of her oldest son when she completed a review of her food stamp eligibility in October 2007.
- 6) As a result of providing this false information concerning her oldest son's residence the Defendant received \$220 in food stamp benefits to which she was not entitled.

IX. DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Department's **PROPOSAL** that Defendant committed an Intentional Program Violation. A one year disqualification period is to be applied to the Defendant effective September 2008 and collection action initiated for repayment of the \$220 over-issuance.

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.

Melissa Hastings