



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 22, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held December 16, 2008 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred.

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 submitted at the hearing revealed that you intentionally provided false and misleading information about your household composition in order to receive Food Stamp (SNAP) benefits for which you were not legally 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. This disqualification will begin effective February 1, 2009.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Sally Musick, SRI, DHHR

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

_____,

Defendant,

v.

Action Number: 08-BOR-2034

**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 an Administrative Disqualification Hearing concluded on December 22, 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 December 16, 2008.

It should be noted here that the Defendant is a current recipient of benefits through the Department.

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:

Sally Musick, State Repayment Investigator, DHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in the Food Stamp (SNAP) 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, 2.2, 9.1, 10.4 & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1	ES/FS-5 (Food Stamp Claim Determination) for period 4/19/07 to 9/30/07 \$ for period 10/18/07 to 3/31/08
DHS-2	Order from the Family Court of [REDACTED] County, entered on October 5, 2005
DHS-3	Combined Application and Review Form (CAF) dated 4/19/07
DHS-4	Case Comments dated 9/21/07
DHS-5	Combined Application and Review Form (CAF) dated 10/18/07
DHS-6	DFA-RR-1 (Rights and Responsibilities) signed by the Defendant on 4/19/07 and 10/18/07
DHS-7	West Virginia Income Maintenance Manual Chapter 1.2 and 2.2
DHS-8	West Virginia Income Maintenance Manual Chapter 9.1A.2.h and 20.2

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from State Repayment Investigator, Sally Musick, on September 3, 2008. Ms. Musick contends that the Defendant has committed an Intentional Program Violation and is recommending that she be disqualified from participation in the Food Stamp Program for a period of one (1) year.
- 2) Notification of the December 16, 2008 hearing was mailed to the Defendant on October 27, 2008 via First Class Mail as the Defendant is a current recipient of benefits and resides at an address known to be good by the Department.
- 3) The hearing convened as scheduled at 9:00 a.m., and as of 9:15 a.m., the Defendant failed to appear. As set forth in regulations [7 CFR 273.16 (e) (4)], and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 740.20), the hearing was conducted without the Defendant in attendance.

- 4) The Department contends that the Defendant provided false information on April 19, 2007 and again on October 18, 2007 when she completed an application/review for Food Stamp benefits and reported that her son was living in her home. The Department submitted Exhibits DHS-3 and DHS-5, Combined Application and Review Forms, bearing the Defendant's signature. Both of these Exhibits confirm that the Defendant reported that her son was living in her home.
- 5) Department's Exhibit DHS-4 includes case comments recorded in the Defendant's case on September 21, 2007 wherein _____, the Defendant's mother, reported that she has had custody of the Defendant's son since he was born.
- 6) Exhibit DHS-2 is a FINAL CHILD SUPPORT AND REIMBURSEMENT ORDER from the Family Court of _____ County, West Virginia (Civil Action No 05-D-98), entered by the Honorable David P. Born, on October 5, 2005. This order states, in pertinent part:

Notwithstanding the fact that _____ is a full time student income was attributed to her inasmuch as the child for whom support is sought resides with _____, _____ mother, and _____ provides for the child's physical needs.

- 7) Department's Exhibit DHS-6, DFA-RR-1, is the Rights and Responsibilities form completed and signed by the Defendant on the day of application/review (April 19, 2007 and October 18, 2007). The Defendant marked "yes" to item #4 which states:

I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not received 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.

By signing the DFA-RR-1, the Defendant certified that she read, understood, and accepted the Rights and responsibilities and that all of the information she provided was true and correct.

- 8) Exhibit DHS-1 (Food Stamp Claim Determination) was submitted to show that by providing false and misleading information about her household composition, the Defendant received \$837 in Food Stamp benefits during the period 4/19/07 - 9/30/08 and \$744 during the period 10/18/07 – 3/31/08 for which she was not legally entitled.
- 9) West Virginia Income Maintenance Manual ' 10.4:
This section contains policy relating income disregards and deductions and to computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and the number in the benefit group {emphasis added}.

- 10) West Virginia Income Maintenance Manual ' 1.2 (E):
The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 11) West Virginia Income Maintenance Manual ' 20.2:
When a AG (benefit 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.
- 12) 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)
- 13) Common Chapters Manual 740.11.D states as follows:

Intentional Program Violation - 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 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.

VIII. CONCLUSIONS OF LAW:

- 1) The evidence reveals that on two separate occasions, the Defendant provided false and misleading information about her household composition in order to receive Food Stamp benefits for which she was not entitled. This clearly establishes intent.
- 2) The policy and regulations that govern the Food Stamp program state that a 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.
- 3) There is clear and convincing evidence that the Defendant committed an intentional program violation as defined in the Food Stamp policy and regulations.
- 4) In accordance with Food Stamp policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first time offense is twelve months (one year).

- 5) Only the Defendant is subject to this disqualification. The 1-year disqualification will begin effective February 1, 2009.

IX. DECISION:

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

The Agency=s proposal to apply a Food Stamp disqualification is **upheld**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of December, 2008.

**Thomas E. Arnett
State Hearing Officer**