



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

September 5, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 26, 2008 for the purpose of determining whether or not an Intentional Program Violation 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 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 that you intentionally misrepresented yourself at your Food Stamp review in October 2007. However, it is determined that your husband should have been included in your Assistance Group at that time and you are required to repay the overissuance of Food Stamps received for which you were not eligible for.

It is the decision of the State Hearings Officer to **reverse** the decision of the Department to impose an Intentional Program Violation and **uphold** the decision of the Department to impose a Food Stamp repayment.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Amy Samples, Repayment Investigator

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

_____,

Defendant,

v.

Action Number: 08-BOR-1763

**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 26, 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 26, 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

Amy Samples, Repayment Investigator
Tim Moses, Front End Fraud 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 the Defendant committed an Intentional Program Violation requiring a repayment of Food Stamps.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 1.2, 2.2, 9.1 and 20.2
Code of Federal Regulations § 273.16

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp Claim Determination Form
- D-2 Food Stamp Claim Calculation Form
- D-3 Food Stamp Allotment Determination Screen (EFAD) from Rapids Computer System
- D-4 Food Stamp Issuance History/Disbursement Screen (IQFS) from Rapids Computer System
- D-5 Postal Verification Form
- D-6 Statement from [REDACTED] dated March 5, 2008
- D-7 Income Verification from [REDACTED] for _____
- D-8 Case Comments (CMCC) from Rapids Computer System
- D-9 Combined Application Form and Rights and Responsibilities Form dated October 29, 2007
- D-10 Combined Application Form and Rights and Responsibilities Form dated May 8, 2008
- D-11 West Virginia Income Maintenance Manual § 1.2 E
- D-12 West Virginia Income Maintenance Manual § 9.1 A
- D-13 West Virginia Income Maintenance Manual § 9.1 B
- D-14 West Virginia Income Maintenance Manual § 20.2
- D-15 Code of Federal Regulations § 273.16
- D-16 Benefit Recovery Referral Screen (BVRF) from Rapids Computer System
- D-17 Notification of Intent to Disqualify Letter dated June 27, 2008
- D-18 Waiver of Administrative Disqualification Hearing
- D-19 Referral/Claim Comments Screen (BVCC) from Rapids Computer System

Claimants' Exhibits:

- C-1 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' State Repayment

Investigator, Amy Samples, on July 22, 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 June 27, 2008 that the Department had reason to believe she intentionally violated the Food Stamp program by failing to report accurate household composition at review. The result was an overpayment of \$1388 in Food Stamps.
- 3) Defendant had a Food Stamp review on October 29, 2007 and reported that her husband, _____ Sr., had left the household on October 15, 2007. She did not expect him to return. Mr. _____ was removed from the Food Stamp Assistance Group (AG) effective November 2007.
- 4) An investigation was completed by the Front End Fraud Unit regarding Defendant's household composition and determined that Mr. _____ had never left the household. Mr. _____ was added back to Defendant's Food Stamp AG effective April 2008.
- 5) The Department presented into evidence a statement dated March 5, 2008 from _____, the bus driver for Defendant's children, which reads (D-6):

I am a bus driver for _____ County Schools. I drive from _____ to the _____ area and have had this route for about 14 years. _____, _____ and _____ Jr. ride my bus from _____. I pick them up and drop them off at their house. The only close neighbor is _____ Sr.'s mother, who lives next door. The next closest neighbor's would be approx. ¼ mile away. Every once in a while when taking kid's home, I look over the hill and see the parents in the yard. Every morning, like clockwork, while driving out from Thayer on my elementary school run, I pass _____ going home. _____ drives a blueish [sic], 2 door, Chevy _____. I have given _____ my permission to take this statement by telephone and that he has read it back to me and that the facts are true.

- 6) The Department also submitted a postal verification form completed by the _____ Postmaster verifying that both Defendant and Mr. _____ receive mail at _____ 1 _____, WV (D-5).
- 7) The Department presented verification from Mr. _____'s employer, _____, showing his address as _____, WV as of December 27, 2007 (D-7).
- 8) The Department contends that Mr. _____ was still residing with Defendant at her Food Stamp review in October 2007 and he and his income should have been included in the Food Stamp determination for November 2007 – March 2007. Per policy, Defendant was required to report accurate household composition at application and review and her legal spouse must be included in her Food Stamp AG. Defendant has been a Food Stamp recipient since 1997 and is aware of her responsibility to report accurate household information.

- 9) Defendant testified that her husband left her sometime in September 2007 but they have been having marital problems since February 2007. When he left, he moved next door to his mother's house. He also sometimes stayed with their daughter or his sister. Mr. _____ paid all the household expenses and also gave her \$400 monthly for the children and therefore could not afford a place of his own. He never changed his mailing address since he was just next door and he receives his paycheck at work.

Defendant stated that her husband does come over to visit the children. He will watch the children so she can run errands. He works night shift at _____ and sometimes sleeps at their house during the day. Defendant stated that since he pays all the bills, she was not going to refuse him access to the house or the children.

Defendant stated Mr. _____ has moved in and out of the house for the past two (2) years. He will leave for awhile and then come back. At her next Food Stamp review in May 2008, her caseworker advised her that Mr. _____ had been added back to the case as a result of a Fraud Investigation. She did not contest having him added back to the case since he comes and goes so much that it was just easier to leave him in the case. Defendant did say that she felt like Mr. _____ has been in the home more than 50% of the time.

- 10) West Virginia Income Maintenance Manual § 1.2 E states:

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. When the client is not able to provide the required verification, the Worker must assist him. The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions:

- Denial of application
- Closure of an active AG
- Removal of the individual from the AG
- Repayment of benefits
- Reduction in benefits

- 11) West Virginia Income Maintenance Manual § 2.2 B states:

All other AG's which do not meet the requirements for a 24-month certification 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. In addition, an ABAWD in an ILC must report when his work hours are reduced to less than 20 hours per week, averaged monthly, or less than 80 hours a month.

- 12) West Virginia Income Maintenance Manual §9.1 A states:

The Food Stamp AG must include all eligible individuals who both live together and purchase and prepare their meals together.

When an individual, who is included in the AG, is absent or is expected to be absent from the home for a full calendar month, he is no longer eligible to be included in the AG, and must be removed after proper notice.

The following individuals who live together must be in the same AG, even if they do not purchase and prepare meals together.

- Spouses, who are married to each other under state law

- 13) West Virginia Income Maintenance Manual § 9.1 B states:

The income group includes all AG members and all individuals who live with the AG and would otherwise be included in the AG if not ineligible, disqualified or excluded by law.

- 14) West Virginia Income Maintenance Manual § 20.1 states:

When an AG has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the coupon entitlement of the AG and the coupon allotment the AG was entitled to receive.

- 15) 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) According to Defendant's testimony, Mr. _____ had been out of the household for a month prior to the Food Stamp review in October 2007. However, Defendant testified that he had free access to the house and children and even slept there after working night shift. Mr. _____ was staying there with Defendant more than half the time.

- 3) The Department failed to produce clear and convincing evidence that Defendant intentionally reported incorrect household composition at her Food Stamp review. Mr. _____ has moved in and out for years and Defendant could not anticipate if and when he would return. Per policy, Defendant would not be required to report any household changes after certification except income exceeding the allowable limits.
- 4) Policy also dictates that legal spouses residing together must be included in the same Food Stamp Assistance Group. By Defendant's account, Mr. _____ was staying in the home more than any other residence and his income should have been counted in determining Defendant's Food Stamp allotment for November 2007 – March 2008. Defendant will be required to repay the \$1388 overissuance in Food Stamps for which she was not eligible for.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's proposal of an Intentional Program Violation and **uphold** the Department's proposal of a 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 5th Day of September, 2008.

Kristi Logan
State Hearing Officer