



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

May 16, 2008

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held April 17, 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). An individual, who has made a fraudulent statement or representation about his identity or place of residence in order to receive multiple Food Stamp benefits simultaneously, is ineligible to receive Food Stamp benefits for a 10-year period. (WV Income Maintenance Manual Section 8.6.A)

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. The information also did not show that you made fraudulent statements or representation regarding your residence or identity.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to apply a Food Stamp disqualification penalty against you based on an Intentional Program Violation and receipt of simultaneous multiple benefits.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/Debbie Roberts, Lincoln DHHR

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

\_\_\_\_\_,  
**Defendant,**

**v.**

**Action Number: 07-BOR-2368**

**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 May 1, 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 April 17, 2008.

It should be noted here that the Defendant was notified by first class mail delivery of this hearing on March 13, 2008, and has failed to appear. The Defendant is currently receiving benefits from the Department and her address has been validated. The hearing is being held in her absence, and a decision will be issued based on the evidence presented today.

**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:**

Debbie Roberts, 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 questions to be decided are whether the Defendant committed an intentional program violation and should be disqualified for one year from participation in the Food Stamp Program, and whether the Defendant made a fraudulent statement or representation with respect to her identity or place of residence in order to receive multiple food stamp benefits simultaneously.

### **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 FEFU form dated December 13, 2004
- D-1a Fraud Referral Form dated October 3, 2005
- D-2 WV Income Maintenance Manual Section 1.2E
- D-3 Combined Application Form dated November 12, 2004
- D-4 Rights and Responsibilities form dated November 12, 2004
- D-5 Code of Federal Regulation Section 7.273.16
- D-6 Benefit Recovery Referral form dated June 1, 2006
- D-7 Memorandum from [REDACTED] Fraud Investigations dated May 18, 2006
- D-8 EBT Screens
- D-9 WV Income Maintenance Manual Section 8.2
- D-10 WV Income Maintenance Manual Section 8.2
- D-11 Food Stamp Claim Determination forms
- D-12 WV Income Maintenance Manual Section 2.2
- D-13 WV Income Maintenance Manual Section 20.6
- D-14 Notification of Intent to Disqualify form dated August 28, 2006

- D-15 Notification of Intent to Disqualify form dated October 2, 2007
- D-16 Waiver of Administrative Disqualification Hearing dated October 10, 2007
- D-17 Notification of Intent to Disqualify form dated March 10, 2008
- D-18 WV Income Maintenance Manual Section 20.2
- D-19 Copies of ACCH screens in Rapids

**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 January 18, 2008. The Department contends that the Defendant has committed an Intentional Program Violation and made a fraudulent statement or misrepresentation regarding her residence or identity in order to receive multiple food stamp benefits simultaneously, and is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of ten (10) years.
- 2) On or about August 28, 2006, the Department sent the Defendant a Notification of Intent to Disqualify (D-14) 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:

Based on the evidence developed through our investigation, the agency believes that \_\_\_\_\_ [sic] intentionally violated the food stamp program by receiving benefits issued from the state of West Virginia from January 2005 thru August 2005 while living in \_\_\_\_\_ during this time period.

- 3) The Department sent another notification letter (D-15) to the Defendant dated October 2, 2007 indicating the Department believes that the Defendant "intentionally violated the food stamp program by receiving benefits in two states in November 2004 and the usage [sic] of benefits issued from West Virginia from January 2005 through August 2005 while living in the state \_\_\_\_\_" The letter went on to say:

The evidence to prove this allegation consists of verification from the state of \_\_\_\_\_ of benefits received during November 2004 and January 2005 through August 2005.

- 4) The Department presented evidence (D-3) to show the Defendant applied for Food Stamps and WV Works Cash Assistance in [REDACTED] County West Virginia on November 12, 2004. The Defendant signed Rights and Responsibility forms (D-4) acknowledging she understood that if she or any member of her household made a false statement or misrepresentation of identity and or residence to receive duplicate benefits at the same time frame the responsible party would be disqualified for ten (10) years.
- 5) The Department presented evidence (D-1) which shows that the Department conducted an investigation and on December 13, 2004 the investigator submitted a report to the case worker. The report indicates that many Electronic Benefit Transfer (EBT) transactions have taken place in the [REDACTED] area. The report also indicates the Defendant applied for benefits in [REDACTED] and the case in West Virginia should be closed as soon as possible. The case worker recorded the following on the back of the form - "case closed does not intend to reside in the state of WV." The case worker signed the form December 14, 2004 indicating the case had been closed. Supporting documents (D-1) show that the [REDACTED] State Office of Temporary and Disability Assistance office sent the Department a letter dated February 7, 2005 with the following information:

In response to your request of 2/4/2005, a search of the [REDACTED] Welfare Management System has yielded the following information concerning the above mentioned individual(s):

The TANF Count is: 23 Months (Whole Month Increments)

Assistance Type	Indiv. Status	As of Date	Case Number	County
MA	RJ	10/01/2004	06316893E	[REDACTED]
MA	CL	10/31/2005	008573595J	[REDACTED]
PA	CL	11/03/2004	008573595J	[REDACTED]
FS	AC	01/01/2005	009374124H	[REDACTED]

- 6) The Department presented evidence (D-1a) IFM-1 form and case comments which indicate the claimant stated at 11-04 application that she lives with her sister, and that she had received cash assistance and food stamps from the state of [REDACTED] but it was several months ago. The comments went on to say the worker advised the Defendant to provide a statement from [REDACTED] at the application date. Comments also were made by the case worker on November 19, 2004 indicating the Defendant called requesting to start an activity later than scheduled due to an emergency in [REDACTED]. A recording was made December 14, 2004 indicating "the client is receiving benefits in [REDACTED] applied for 01/05 benefits closed case does not intend to reside in state of WV."
- 7) Case Comments (D-1a) made December 16, 2004 by a supervisor show the Defendant called the Department about her benefits closing. The following was recorded in case comments:

Received phone call from \_\_\_\_\_ this morning inquiring about her benefits closing / I spoke with FEFU who

confirmed they had spoken to Human Services in [REDACTED] that she will begin receiving benefits in [REDACTED] in 01-05 / [REDACTED] denies this and states she got an apt here, but hasn't moved into it / I explained all benefits on her WV EBT card have been spent in [REDACTED] (except for one time used at 7-11) / she stated she had an emergency in [REDACTED] and had to return for a couple of days / told her if she wanted to reapply in 02-05 she would need to provide closure letter from [REDACTED] and HH comp forms – including one from her landlord.

The next recording was made January 3, 2005 and indicated the Defendant called about benefits. The recording goes on to say benefits in [REDACTED] were closed December 2004 and the case is being reopened.

- 8) Department's Exhibit (D-6) shows recordings made by the Criminal Investigator for the Department which state in pertinent part:

Referral received from RI 11/17/05. Issue residency and dual state issuance of benefits. Viewed all documents sent with ref. and determined that just spending f/s benefits in [REDACTED] isn't basis for action. After several phone calls to various Dept's in [REDACTED] was hooked-up with special investigator. Spec Inv sent me copies of applic info from [REDACTED] and was unable to determine benefits issued with any accuracy. Found that [REDACTED] received benefits there in 10 and 11-2004. The application/recert was done in 10/04 and a part month issuance of f/s was made for 10/04 totaling (\$91.00) and a full month 11/04 (\$274.00) was both paid in 10/04 totaling \$365.00. [REDACTED] applied in WV in Nov 2004. She states in cmcc that she had received benefits in [REDACTED] but that it had been several months ago. This may have been a miscommunication but none-the-less a misrepresentation. Can't find if the worker called or queried [REDACTED] regarding last date of benefits. Therefore [REDACTED] received f/s benefits in Nov. 2004 from [REDACTED] and WV at the same time. There was not future issuance in [REDACTED] until 7/05 when she made application and received \$274.00 in f/s. [REDACTED] received f/s in WV in 07/05 and 08/05. The referral to repayments is for f/s only for \$619.00. This is representative of the months of 11/04 and 7/05 for dual state benefits. 08/05 is included as it would appear that if application was made in 07/05 in [REDACTED] that residency was established there. CMCC at

11/19/05 establishes that \_\_\_\_\_ told the worker that she had to go back to [REDACTED] for an emergency. It would appear that case management wasn't sufficient to establish where this person was and when.

- 9) The Department's Exhibit (D-7) shows the Defendant received food stamp benefits in [REDACTED] during the following months:

January 2005  
February 2005  
July 2005

- 10) 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.
- 11) 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.
- 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 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.
- 15) Code of Federal Regulations Section 7CFR273.16.b.5 states:

Except as provided under paragraph (b) (1) (iii) of this section, an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp

benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.

### **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 Department contends that the Defendant committed an Intentional Program Violation (IPV) which would result in a one (1) year disqualification. In addition, the Department also contends the Defendant made a fraudulent statement or representation regarding her residence in order to receive simultaneous multiple benefits from both West Virginia and [REDACTED] and should receive a ten (10) year disqualification.
- 4) Evidence is unclear as to the timeline of when the Defendant lived in each state; therefore, no determination can be made as to the Defendants statements regarding her place of residence. The evidence is sketchy, unreliable and contradictory, and thus fails to convincingly show the Defendant made a fraudulent statement or representation regarding her residence or identity in order to receive simultaneous multiple benefits.
- 5) The Department did show (D-7) that the Defendant received \$274.00 food stamps from [REDACTED] in January 2005, but denied that she would be receiving those benefits during a December 16, 2004 conversation (D-1a) with the Department. No evidence was provided, however, to show the Defendant was aware that she would receive those benefits on December 16, 2004 when the comment was made.

### **IX. DECISION:**

The Agency's proposal to apply a 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 16th Day of May, 2008.**

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**Cheryl Henson  
State Hearing Officer**