



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P. O. Box 468  
Hamlin, WV 25523

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

December 20, 2008

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

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held December 10, 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 demonstrated 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 **uphold** 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-2397**

**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 December 20, 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 10, 2008.

It should be noted here that the Defendant was notified by certified restricted delivery mail on November 24, 2008, and has failed to appear. The hearing is being held in his 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:**

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 October 29, 2008
- D-3 Food Stamp Claim Determination Forms
- D-4 Case Comments from Rapids
- D-5 Employment Data from [REDACTED]
- D-6 Combined Application and Review Form dated December 17, 2007
- D-7 Case Comments from Rapids dated December 17, 2007
- D-8 WV Income Maintenance Manual Section 1.2
- D-9 WV Income Maintenance Manual Section 20.2
- D-10 WV Income Maintenance Manual Section 20.6
- D-11 Copies of Notification letters sent to Defendant

#### **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 November 6, 2008. The Department contends that the Defendant has committed an Intentional Program Violation and made a fraudulent statement or misrepresentation regarding his household earned 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 September 29, 2008, the Department sent the Defendant a Notification of Intent to Disqualify (D-11) form, indicating that the Department had reason to believe he 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 [REDACTED]  
[REDACTED] in your household. Because your earned  
income was not reported, you were over issued in Food  
Stamps.

- 3) The Department presented evidence (D-6, D-7) to show that in December 2007 the Defendant applied for food stamp benefits (D-6) and failed to report that he was employed with [REDACTED]  
[REDACTED]. The case worker recorded the following pertinent information (D-7) during the December 17, 2007 review:

\_\_\_\_\_ in to reapply for FS. He reports only himself  
in the benefit group. His ID verified by an operators. He  
reports living here and there. He reports no income.  
NEHR, DXRL, and OSCAR. He reports no assets. Stated  
not him in DMV. S/U discussed, pays nothing. No SUA.  
Nothing else reported. Rts/Resp/CAF completed and  
signed. FS passed and confirmed. \_\_\_\_\_ will need  
to reg with BEP, checklist and HS-3 Given. Rev Due  
05/08.

\_\_\_\_\_ Reg with BEP 12/17/07...

- 4) The Defendant completed a Food Stamp review in the [REDACTED] County DHHR office on May 30, 2008 (D-4) and reported that he was working for [REDACTED]. He reportedly did not remember the start date. The Department verified that the Defendant started work for [REDACTED] on June 20, 2007.
- 5) The Department contends that the Defendant was working for [REDACTED] when he re-applied for food stamps on December 17, 2007 and intentionally withheld the information about the earnings. The Defendant had been working for [REDACTED] for approximately six months, and had received his

most recent pay on December 14, 2007, just three (3) days prior to the date of application. The Department contends the Defendant withheld this information knowingly, and even went as far as to complete a Bureau of Employment Programs (BEP) registration form. The BEP registration is only necessary for unemployed individuals.

- 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 (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.
- 9) 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) Evidence is clear in that the Defendant was well informed of his responsibility to report circumstances accurately during application and review, and had the opportunity to report the earned income at the December 2007 application. It is clear that the Defendant knowingly withheld the information about his employment in order to receive food stamps. The Defendant even went as far as to register with the Bureau of Employment Programs (BEP) giving the impression he was unemployed.

**IX. DECISION:**

The Agency's proposal to apply a one (1) year 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 20<sup>th</sup> Day of December, 2008.**

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**Cheryl Henson  
State Hearing Officer**