



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 24, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held March 20, 2008 for the purpose of determining whether an Intentional Program Violation (IPV) was committed by you.

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)

Information submitted at the hearing reveals that you intentionally provided false and misleading information about your household income in order to receive Food Stamp benefits for which you were not 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. Your disqualification from the Food Stamp program will begin effective November 1, 2008.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Debbie Roberts, Repayment Investigator

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

_____,
Defendant,

Action Number: 07-BOR-2516

**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 September 24, 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 March 20, 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:

Debbie Roberts, Repayment Investigator

Presiding at the Hearing was Todd Thornton, 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 (IPV) and should be disqualified for a specified period from participation in the Food Stamp Program.

V. APPLICABLE POLICY:

7 CFR §273.16 USDA Code of Federal Regulations
Common Chapters Manual, Chapter 700
West Virginia Income Maintenance Manual, Chapter 1.2
West Virginia Income Maintenance Manual, Chapter 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Benefit Recovery Referral Screen Print dated May 31, 2007
- D-2 West Virginia Income Maintenance Manual, Chapter 1.2, E
- D-3 Three (3) Food Stamp Claim Determination forms (ES-FS-5); Food Stamp Claim Calculation Sheets (ES-FS-5a); Food Stamp Allotment Determination Screen Prints
- D-4 7 CFR §273.16 USDA Code of Federal Regulations
- D-5 Combined Application and Review Form (CAF) dated November 30, 2004; Copy of utility bill
- D-6 Rights and Responsibilities form (DFA-RR-1) dated November 30, 2004
- D-7 Case Comments Screen Print (Case Comments) dated November 30, 2004
- D-8 Combined Application and Review Form (CAF) dated June 6, 2005
- D-9 Rights and Responsibilities form (DFA-RR-1) dated June 6, 2005
- D-10 Food Stamp 12 Month Contact Review form dated April 24, 2006
- D-11 Food Stamp 24-Month Review form completed May 1, 2007
- D-12 Case Comments Screen Print from May 3, 2005 through June 6, 2005
- D-13 Wage Verification dated May 10, 2007; Wage Verification request (IFM-5B and IFM-5D) dated July 19, 2007; BEP Wage Details Screen Print
- D-14 West Virginia Income Maintenance Manual, Chapter 2.2
- D-15 West Virginia Income Maintenance Manual, Chapter 20.6
- D-16 Notification of Intent to Disqualify (IG-BR-44a) and Waiver of Administrative Disqualification Hearing (IG-BR-44) dated September 6, 2007
- D-17 West Virginia Income Maintenance Manual, Chapter 20.2

VII. FINDINGS OF FACT:

- 1) On May 31, 2007, a referral (Exhibit D-1) for overissuance of Food Stamps was sent to the Department's Investigations and Fraud Management (IFM) Unit. The referral alleges that the Defendant withheld her earnings, resulting in an overissuance of Food Stamp benefits. The Department notified the Defendant of the Department's allegations, and mailed the Defendant a Waiver of Administrative Disqualification Hearing form (Exhibit D-16). Testimony from the Department confirmed that the

Defendant did not return the waiver form. This Administrative Disqualification Hearing was subsequently requested by the Department.

- 2) The hearing convened as scheduled at 1:00 p.m., and as of 1:15 p.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, 740.20), the hearing was conducted without the Defendant in attendance.
- 3) The Code of Federal Regulations, 7 CFR §273.16(c), defines an Intentional Program Violation (IPV) as:

(c) Definition of intentional Program violation. 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 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).

- 4) The Department presented Combined Application and Review Forms and Rights and Responsibilities forms dated November 30, 2004 and June 6, 2005 (Exhibits D-5, D-6, D-8, and D-9). Additionally, two mail-in reviews, one dated April 24, 2006 (Exhibit D-10) and one completed May 1, 2007 (Exhibit D-11) were submitted by the Department. All forms were signed by the Defendant. In Exhibits D-11 and D-5, the Defendant reported no income in her household of any type. In Exhibits D-8 and D-10, the Defendant reported unearned income, but made no mention of earned income from any source.
- 5) Case comments from the eligibility worker were submitted by the Department corresponding with the November 30, 2004 review (Exhibit D-7) and the June 6, 2005 review (Exhibit D-12). Pertinent comments from Exhibit D-7 state:

MS. _____ IN OFFICE FOR FOOD STAMP AND MAO [sic]
REVIEW. R & R READ AND UNDERSTOOD. NO INCOME
REPORTED.

Comments from Exhibit D-12 reveal the Defendant's response when the Department's eligibility worker questioned her regarding an alert related to employment:

DXRL SHOWED MS. _____ WAS HIRED ON 5/3/05 @ [sic]
_____. ASKED HER @ [sic] THIS & SHE STATED A FRIEND
WHO WAS APPLYING ALSO APPLIED FOR HER & SIGNED HER
NAME TO THE APPL [sic]. CLIENT STATED _____ CALLED
HER TO SET UP AN INTERVIEW & SHE STATED SHE TOLD
THEM SHE HAS PARTIAL DISAB [sic] & IS TRYING FOR FULL
DISAB [sic] & CANNOT WORK FOR THEM OR ANYONE.

- 6) After receiving the initial recovery referral (Exhibit D-1), the Department requested wage verification from the Defendant's employers (Exhibit D-13). Verification was obtained by the Department from one employer, but BEP Wage Details were substituted after verification could not be obtained from a second employer. The documentation demonstrated that the Defendant was employed when each application or review for Food Stamps was completed (Exhibits D-5, D-8, D-10, D-11).
- 7) The West Virginia Income Maintenance Manual, Chapter 1.2, E, states, in pertinent part:

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

The action taken by the Worker depends on the specific requirement. These actions are found with the specific policy or in this Chapter under the program-specific information.

VIII. CONCLUSIONS OF LAW:

- 1) The Department established that unreported earned income was received by the Defendant that caused an overissuance for the Food Stamp program.
- 2) The intent of the Defendant to conceal or withhold this information has been established by clear and convincing evidence. The Department presented four different application or review forms in which the Defendant withheld her earnings; two of these involved face-to-face interviews with the Department's eligibility worker. On two occasions, the Defendant reported her unearned income, but never reported her employment and wages. When questioned about an alert regarding possible employment, the Defendant made a false statement that she did not work for that employer. The Department was correct in its determination that an IPV was committed by the Defendant.

IX. DECISION:

Intentionally withholding or concealing facts to secure food Stamp benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Agency's proposal to apply a Food Stamp disqualification is **upheld**. The Defendant will be disqualified from the Food Stamp program for a twelve (12) month period to begin effective November 1, 2008.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of September, 2008.

**Todd Thornton
State Hearing Officer**