



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

March 21, 2008

Dear Mr. _____-:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 19, 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 evidence presented at the Hearing failed to prove your intent to willfully misrepresent your circumstances in order to receive Food Stamps.

It is the decision of the State Hearings Officer to **reverse** the Department's determination of the occurrence of an Intentional Program Violation.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Danita Bragg, Repayment Investigator, DHHR

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

Claimant,

Action Number: 08-BOR-842

**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 March 19, 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 19, 2008 on a timely appeal, filed February 12, 2008.

It should be noted here that the claimant's benefits not been continued pending a hearing decision.

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
_____, Defendant's wife
Danita Bragg, Repayment Investigator, DHHR

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the State Board of Review.

Observing the Hearing was Amy Samples, Repayment Investigator, for training purposes.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether Defendant committed an Intentional Program Violation.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual 9.1 A(2)
West Virginia Income Maintenance Manual 2.2 B
Code of Federal Regulations- 7 CFR ' 273.16)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp Claim Determination Form for February 1999 – August 2007
- D-2 Food Stamp Calculation Sheet from Rapids Computer System for February 1999 – August 2007
- D-3 Food Stamp Issuance History/Disbursement Screen from Rapids for February 1999 – August 2007
- D-4 Application/Review Forms and Rights and Responsibility Forms for January 27, 1999, December 13, 1999, December 13, 2000, December 14, 2001, November 26, 2002, December 8, 2003, December 21, 2004, December 7, 2005, December 13, 2006, May 29, 2007
- D-5 Income Verification for _____ from _____ Worldwide from November 2004 – September 2006
- D-6 Department of Motor Vehicles Driver History Screen for Defendant and _____
- D-7 Social Security Administration Online Payment History for Defendant and _____
- D-8 Promissory Note of Land Contract between Defendant and _____ and _____
Petition of Wrongful Occupation of Residential Rental Property between _____ and _____
III, and Receipts of Land Contract Payments made by _____
- D-9 _____ County Assessor Land Ownership Records for Homestead and Non-Homestead Property of _____
- D-10 West Virginia Income Maintenance Manual Section 9.1 A(2)
- D-11 West Virginia Income Maintenance Manual Section 1.2 E
- D-12 West Virginia Income Maintenance Manual Section 20.2 B(2)
- D-13 Article 273.16c of Federal Register Defining an Intentional Program Violation

Claimants' 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' State Repayment Investigator, Danita Bragg, on February 15, 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.
- 2) The Defendant was notified by a Notification of Intent to Disqualify letter dated February 5, 2008 that the Department had reason to believe he intentionally violated the Food Stamp program by failing to report accurate household composition, earned income and non-homestead property. The result was an overpayment of \$1042 in Food Stamps.

The Defendant met with Ms. Bragg for a pre-hearing conference on February 12, 2008. Defendant elected to have an administrative hearing regarding the Department's claim.

- 3) The Defendant applied for Food Stamps on January 27, 1999. He reported to the Department that he was separated from his wife, _____, and that he rented from _____. Defendant continued to report no one other than himself in the household at reviews in December 1999, December 2000, December 2001, November 2002, December 2003, December 2004, December 2005, December 2006 and May 2007 (D-4).
- 3) A referral for repayment was received by the Claims and Collection Unit on October 17, 2007. As a result of this investigation, the Department contends that the Defendant and his wife, _____, have been residing together since the Food Stamp application made in January 1999. Ms. _____ was employed with _____ Worldwide from June 2000 to March 2007 (D-5). She also owns two pieces of non-homestead property in addition to the homestead property at _____ Street in _____ WV (D-9). Ms. _____ currently receives Social Security (D-7).
- 4) The Defendant was in the county office on nine (9) separate occasions for Food Stamp reviews subsequent to his application and failed to report the presence of his wife in his household. Those reviews were in December 1999, December 2000, December 2001, November 2002, December 2003, December 2004, December 2005, December 2006 and May 2007. On each of these visits, the Defendant signed the Rights and Responsibilities form which advised him of his responsibility to report accurate household information and the consequences for his failure to do so (D-4).
- 5) The Department provided evidence that Ms. _____ used the address of _____ Street for her drivers' license (D-6), employment records at _____ Worldwide (D-5) and Social Security benefits (D-7). The Defendant provided the same address to the Department for his Food Stamps (D-4), Department of Motor Vehicles (D-6) and to the Social Security Administration (D-7).

The Department also obtained a copy of a land contract made between Ms. _____ and _____. The agreement was for a piece of property beside the _____s' homestead property, _____. Again the address for Ms. _____ on this document is the same as the Defendant's (D-8).

- 6) The addition of Ms. _____ and her income and non-excluded assets to the Defendant's household caused the Defendant to be ineligible for the Food Stamps he received from the period of February 1999 to August 2007 (D-1, D-2, and D-3).
- 7) The Defendant testified that he and his wife separated in _____ several years ago and she moved to West Virginia. He moved to West Virginia sometime in 1997 or 1998 after having a nervous breakdown so Ms. _____ could look after him. He states he has had memory problems since. He stated that they were still legally married, being unable to divorce due to his wife's Catholic beliefs. When questioned if he had been living with his wife since 1999 he answered yes, but that they were separated.
- 8) _____ testified that the first piece of non-homestead property in question was _____ Street which is adjacent to her homestead property. She sold the property at _____ Street to _____ on a land contract on February 1, 2007 (D-8 and D-9). Prior to selling the property, the Defendant lived in the house on that property. The Defendant paid her rent to live there and all utilities were in her name. Her maiden name is _____ and she stated she was the person who signed rent receipts for the Defendant that he produced at the Food Stamp application/reviews. He did not move in with her at _____ Street until January 2007, shortly before the sale to Mr. _____. He used the address of _____ because there had been no mail delivery to 169 until Mr. _____, III moved in.

Ms. _____ denies owning the second piece of property at _____ Street saying it belongs to another _____, a _____. She states she is always getting phone calls and mail belonging to the other _____.
- 9) The Defendant was questioned that if he moved in with his wife in January 2007, why he did not report this at his Food Stamp review in May 2007. The Defendant and Ms. _____ stated his memory was bad and he most likely forgot. Ms. _____ has never accompanied the Defendant to his appointments with the Department.
- 10) 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 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.
- 2) The Defendant admitted to living with his wife and his failure to report that information to the Department. According to testimony from the Defendant and Ms. _____, they did not start living together until January 2007. Prior to January 2007, the Defendant resided in a house next door to Ms. _____. Their credible testimony disputes the Department's claim that they were living together when the Defendant applied for Food Stamps in January 1999.
- 3) The evidence presented at the Hearing by the Department supporting their claim against the Defendant only proved that the Defendant and Ms. _____ shared the same mailing address since 1999, not that they were sharing the same residence. Even though they are still legally married, they would not be in the same Assistance Group for the time period they lived separately from one another.
- 4) While the Defendant was required to report any changes at his last Food Stamp review in May 2007, it was not shown by clear and convincing evidence that his failure to do so was intentional.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's proposal of an Intentional Program Violation.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of March, 2008.

Kristi Logan
State Hearing Officer