



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

October 1, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held April 22, 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
Karen Nelson, Repayment Investigator

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

Defendant,

v.

Action Number: 08-BOR-845

**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 October 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 fair hearing was convened on April 22, 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:

Karen Nelson, 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 questions to be decided are 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 Food Stamp Claim Determination Form (ES-FS-5)
- D-2 Case Comments dated May 7, 2007 and June 11, 2007; West Virginia CHIP application (WV-KIDS-1) dated May 7, 2007
- D-3 Case Comments dated July 17, 2007
- D-4 West Virginia Income Maintenance Manual, Chapter 2.2, B; Chapter 2.2, B, 2, b
- D-5 Income Verification
- D-6 West Virginia Income Maintenance Manual, Chapter 1.2; Chapter 2.2
- D-7 West Virginia Income Maintenance Manual, Chapter 9.1, A, 2, h; Chapter 20.2

VII. FINDINGS OF FACT:

- 1) The Department, through its Investigations and Fraud Management (IFM) Unit, requested this Administrative Disqualification Hearing to determine if the Defendant committed an Intentional Program Violation by failing to report earned income from a second job.
- 2) The hearing convened as scheduled at 3:00 p.m., and as of 3:15 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 submitted income verification for the Defendant (Exhibit D-5) and the Defendant's May 7, 2007 application (Exhibit D-2) for the West Virginia Children's Health Insurance Program, which listed earnings from the first job but not the second job. Testimony from the Department confirmed that a Food Stamp review was completed, also on May 7, 2007. Case comments from July 17, 2007 were also presented by the Department, and state, in pertinent part:

....AFTER SPEAKING TO MR [sic] LOVELL EARLIER TODAY, I CHECKED ESABPS AND SHOWED [sic] MR [sic] LOVELL WORKING MORE THAN 1 JOB PER WORK QUARTER, I CALLED HIM AGAIN AND ASKED IF HE WERE [sic] WORKING 2 JOBS AND HE SAID YES-----I ALSO WORK AT [REDACTED] 30 HRS PER WK @ \$6.25 PER HOUR.

The Department testified that this unreported income from the Defendant resulted in an overissuance of Food Stamps, and presented the Food Stamp Claim Determination (Exhibit D-1) form.

- 5) The Department submitted evidence to show that the Defendant was employed at [REDACTED] which was reported and verified at the May 7, 2007 review. Testimony revealed that unearned income of SSI was also reported in the Defendant's household at the time of review. Evidence submitted by the Department also showed that the Defendant's earnings from employment with [REDACTED] began no later than January 11, 2007 and continued at the time of his May 7, 2007 review and the discovery of this income on July 17, 2007.
- 6) The West Virginia Income Maintenance Manual, Chapter 9.1, A, 2, h, states:

h. Intentional Program Violation (IPV)

Persons who have been found guilty of an IPV are disqualified as follows:

- 1st offense: 1 year
- 2nd offense: 2 years
- 3rd offense: Permanent

VIII. CONCLUSION OF LAW:

- 1) The Department provided clear and convincing evidence that the Defendant was working two jobs at the time of his Food Stamp review, and only reported the income from one of the jobs. On May 7, 2007, the Defendant was working at both [REDACTED]

██████████ and at ██████████ The Defendant reported his earnings from ██████████ as well as unearned income in the household, but withheld reporting of his second job with ██████████ The Department demonstrated that this resulted in a overissuance of Food Stamps to the Defendant. The Department was correct in its determination that an IPV was committed by the Defendant.

IX. DECISION:

Intentionally making a false or misleading statement or misrepresenting 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 October, 2008.

Todd Thornton
State Hearing Officer