



**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**

March 13, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held November 25, 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 April 1, 2009.

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,

v.

Action Number: 08-BOR-1903

**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 March 13, 2009 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 November 25, 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. QUESTION TO BE DECIDED:

The question to be decided is whether or not 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 January 28, 2008
- D-2 West Virginia Income Maintenance Manual, Chapter 1.2, E
- D-3 Food Stamp Claim Determination form (ES-FS-5); Food Stamp Calculation Sheet (ES-FS-5a); Food Stamp Allotment Determination Screen Print
- D-4 7 CFR §273.16 USDA Code of Federal Regulations
- D-5 Combined Application and Review Form (CAF) dated January 15, 2008; Rights and Responsibilities form (DFA-RR-1) dated January 15, 2008
- D-6 West Virginia Income Maintenance Manual, Chapter 2.2
- D-7 Wage Verification
- D-8 West Virginia Income Maintenance Manual, Chapter 20.6
- D-9 Notification of Intent to Disqualify form (IG-BR-44a) dated June 3, 2008; Waiver of Administrative Disqualification Hearing form (IG-BR-44)
- D-10 West Virginia Income Maintenance Manual, Chapter 20.2

VII. FINDINGS OF FACT:

- 1) On January 28, 2008, 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 husband's 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-9). 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 11:00 a.m., and as of 11:15 a.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 the Combined Application and Review Form and Rights and Responsibilities form dated January 15, 2008 (Exhibit D-5). Both forms were signed by the Defendant and the Defendant's spouse. The Food Stamp application listed terminated employment for the Defendant's spouse. The former employer was listed as [REDACTED] West Virginia, the employment end date was listed as December 31, 2007, and the gross income was listed as zero.
- 5) When employment ends, any continuing income from the terminated source counts as income in the determination of the Food Stamp allotment. The West Virginia Income Maintenance Manual, Chapter 10.4.A.5.a, states, in pertinent part:

When:

- The first month of eligibility meets the definition of an initial month, i.e. the first month following any period of time in which the AG was not participating; and

- An income source terminates in the month of application or in the 30 days prior to the date of application, income from this source must not be converted to a monthly amount. Instead, the Worker must use the **actual amount already received from the terminated source in the month of application plus the amount expected to be received from this source later in the month of application.** This is the amount used as income for the month of application. Income from this source for the past 30 days or from the month of application must not be used to convert the terminated income to a monthly amount. (emphasis added)

- 6) The Department requested and received wage verification (Exhibit D-7) from the former employer of the Defendant's husband. Additional checks were received by the Defendant's husband in January 2008, after his employment ended. One check was dated January 10, 2008, only a few days prior to the Food Stamp application.

- 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 clearly established that earned income was received by the Defendant's husband that was withheld during an initial food stamp application. The Department showed that this unreported income resulted in a Food Stamp overissuance for January 2008.
- 2) The Department also clearly established the intent of the Defendant to conceal or withhold this information to receive Food Stamps for which she would not have otherwise been entitled. The Department showed that the Defendant made an initial application only five days after receiving income from a terminated source, and withheld reporting this income. 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 participation in the Food Stamp program for a period of twelve (12) months to begin effective April 1, 2009.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of March, 2009.

Todd Thornton
State Hearing Officer