



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 18, 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 May 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-1989

**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 18, 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 20.2; Chapter 9.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Benefit Recovery Referral Screen Print dated July 16, 2007
- D-2 West Virginia Income Maintenance Manual, Chapter 1.2, E
- D-3 Food Stamp Claim Determination forms (ES-FS-5); Food Stamp Allotment Determination Screen Prints; Food Stamp Calculation Sheets (ES-FS-5a)
- D-4 7 CFR §273.16 USDA Code of Federal Regulations
- D-5 Combined Application and Review Form (CAF) dated December 15, 2006
- D-6 Rights and Responsibilities form (DFA-RR-1) dated December 15, 2006
- D-7 Wage verification
- D-8 West Virginia Income Maintenance Manual, Chapter 2.2
- D-9 West Virginia Income Maintenance Manual, Chapter 20.6
- D-10 Notification of Intent to Disqualify form (IG-BR-44a) dated May 6, 2008; Waiver of Administrative Disqualification Hearing form (IG-BR-44)
- D-11 West Virginia Income Maintenance Manual, Chapter 20.2

VII. FINDINGS OF FACT:

- 1) The Department's Investigations and Fraud Management (IFM) Unit is alleging an act of Intentional Program Violation (IPV) in the Defendant's case, due to income withheld during a December 2006 application.
- 2) The hearing convened as scheduled at 10:00 a.m., and as of 10:15 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 (Exhibit D-5) and Rights and Responsibilities form (Exhibit D-6) dated December 15, 2006. Both forms were signed by the Defendant. The Food Stamp application listed loss of employment for the Defendant from [REDACTED] and no current earned income was reported.
- 5) The Department obtained verification (Exhibit D-7) that the Defendant's earned income from [REDACTED] was ongoing and consistent at the time of application, and continued for several months after application. The Defendant received a check with a pay date three days prior to the date of her Food Stamp application with omitted earned income.
- 6) The Department presented documentation (Exhibit D-3) showing the calculation of two claims resulting from the income not counted against the Defendant's case. A claim was determined for January 2007 in the amount of \$151.00, and from April 2007 through June 2007 in the amount of \$138.00. Testimony from the Department explained that the two claims are separated by a period where the income did not cause an overissuance in Food Stamps. The Department additionally confirmed that the Defendant has no prior IPV offenses.
- 7) 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. CONCLUSIONS OF LAW:

- 1) The Department clearly established that earned income was received by the Defendant that was entirely withheld during an initial Food Stamp application. The Department showed that this action resulted in two Food Stamp overissuances totaling \$289.00.
- 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, at application, the Defendant

reported loss of employment from her employer, when this employment was ongoing and income was continuous. 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 May 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**