



**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

April 3, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held December 16, 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, Chapter 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  
Karen Nelson, Criminal Investigator

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

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**Defendant,**

**v.**

**Action Number: 08-BOR-2103**

**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 April 3, 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 December 16, 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, Criminal 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.A.2.h

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- D-1 Food Stamp Claim Determination form (ES-FS-5)
- D-2 Combined Application and Review Form (CAF) dated January 2, 2008
- D-3 Case Comments dated January 2, 2008
- D-4 Wage verification
- D-5 Rights and Responsibilities form (DFA-RR-1) dated January 2, 2008
- D-6 West Virginia Income Maintenance Manual, Chapter 1.2
- D-7 West Virginia Income Maintenance Manual, Chapter 2.2
- D-8 West Virginia Income Maintenance Manual, Chapter 9.1.A.2.h
- D-9 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 January 2008 application.
- 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 (Exhibit D-2) and Rights and Responsibilities form (Exhibit D-5) dated January 2, 2008. Both forms were signed by the Defendant. The Food Stamp application listed no earned income in the household. Case comments (Exhibit D-3) from January 4, 2008 documented the application, and also noted that the Claimant reported no earned income.
- 5) The Department obtained verification (Exhibit D-4) that the Defendant's employment with [REDACTED] began on August 28, 2007, was ongoing at the time of application, and continued for several months after application. The Defendant received a check with a pay date five days prior to the date of her Food Stamp application.
- 6) The Department presented documentation (Exhibit D-1) showing the calculation of the Food Stamp claim resulting from the income not counted against the Defendant's case. A claim was determined from January 2008 through April 2008 in the amount of \$317.00. 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 a Food Stamp application. The Department showed that this action resulted in a Food Stamp overissuance totaling \$317.00.

- 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 no earned income from any source, when she was employed with ongoing income received only a few days prior to application. 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 April, 2009.**

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**Todd Thornton**  
**State Hearing Officer**