



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 17, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held February 5, 2009 for the purpose of determining whether or not an Intentional Program Violation (IPV) occurred.

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).

The information submitted at the hearing failed to demonstrate that you intentionally made false or misleading statements or withheld information about your circumstances in order to receive Food Stamp benefits for which you were not entitled.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to apply a one (1) year Food Stamp disqualification penalty against you based on an Intentional Program Violation.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/Brian Shreve, Boone DHHR

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

-----,

Defendant,

v.

Action Number: 08-BOR-2626

**West Virginia Department of
Health and Human Resources,**

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing concluded on February 15, 2009. 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 hearing was convened on February 5, 2009.

It should be noted here that the Defendant was notified by first class mail delivery of this hearing on December 22, 2008, and has failed to appear. The Defendant is currently receiving benefits from the Department and his address has been validated. The hearing is being held in his absence, and a decision will be issued based on the evidence presented today.

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:

Brian Shreve, State Repayment Investigator, DHHR

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Defendant committed an intentional program violation and should be disqualified for one year from participation in the Food Stamp Program.

V. APPLICABLE POLICY:

7 CFR ' 273.16 USDA Code of Federal Regulations
Common Chapters Manual Chapter 700, Appendix A
West Virginia Income Maintenance Manual ' 1.2, & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Federal Regulations 273.16
- D-2 Benefit Recovery Referral Screen dated December 15, 2008
- D-3 Food Stamp Determination Forms
- D-4 Case Comments from Rapids
- D-5 Copy of letter to [REDACTED] Company dated October 30, 2008
- D-6 Combined Application Form dated February 7, 2008
- D-7 Case Comments dated January through March 2008
- D-8 WV Income Maintenance Manual Section 1.2
- D-9 WV Income Maintenance Manual Section 20.2
- D-10 WV Income Maintenance Manual Section 20.6
- D-11 Notification letter dated November 25, 2008

Claimant's 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' (Department) on December 18, 2008. The Department contends that the Defendant has committed an Intentional Program Violation and made a fraudulent statement or misrepresentation regarding his household income in order to receive food stamp benefits, and is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of one (1) year.
- 2) On or about November 25, 2008, the Department sent the Defendant a Notification of Intent to Disqualify (D-11) form, indicating that the Department had reason to believe he intentionally violated a Food Stamp Program rule. The form also included the following:

----- intentionally violated the food stamp program by:
You failed to report your earned income [REDACTED]
[REDACTED] in the household. Therefore, you [sic]
monthly food stamp allotment was wrong and you was
[sic] over issued.
- 3) The Department presented evidence to show that in July 2008 the Defendant was actively receiving food stamps as a "simplified reporting" case, when he completed a review (D-4) for food stamp eligibility and reported that he had previously worked during the months of February 2008 through June 2008. He reported zero income for the review month of July 2008. The Department subsequently verified (D-5) that the Defendant previously worked for Larry Stevenson Trucking and received his first pay day on February 8, 2008. The Department was unable to verify the Defendant's actual start date, however they contend he was working for this company when he applied for food stamp benefits on February 7, 2008 (D-6) because he received his first pay day on February 8, 2008 in the amount of \$400.00. However, the employer verification (D-5) also shows that the Defendant's most recent hire date with the company is September 15, 2008 and that he was paid \$390.00 on that same date. This suggests the possibility of checks being issued to employees on the date of hire.
- 4) The Department contends that the Defendant knew about the employment on February 7, 2008 when he applied for food stamp benefits and intentionally withheld the information in order to receive food stamp benefits.
- 5) West Virginia Income Maintenance Manual ' 1.2 (E) states that it is the client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 6) West Virginia Income Maintenance Manual ' 20.2:

When a AG (assistance group) has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.

- 7) West Virginia Income Maintenance Manual ' 20.2 (C) (2):
Once an IPV (Intentional Program Violation) is established a disqualification penalty is imposed on the AG (assistance group) members who committed the IPV. The penalties are as follows: (' 9.1, A, 2, h) 1st Offense: 1 year (Disqualification)
- 8) Common Chapters Manual 700, Appendix A, Section B, provides that an 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 benefits.
- 14) Common Chapters Manual 700, Appendix A, Section G, states that the State Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an Intentional Program Violation as defined in Section B of this Appendix.

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern the Food Stamp program state that a Food Stamp Program Violation has occurred when an individual intentionally makes a false or misleading statement, or misrepresented, concealed or withheld facts relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp benefits.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 3) There is no clear and convincing evidence that the Defendant was employed with the company in question on February 7, 2008 when he applied for food stamp benefits, therefore no evidence exists to show he withheld information at application. Although the fact that he received a pay day on February 8, 2008 in the amount of \$400.00 is suggestive of employment on February 7, 2008, that in itself is not enough to clearly show he was employed on that date.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification is **reversed**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of February, 2009

**Cheryl Henson
State Hearing Officer**