



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

March 27, 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 March 10, 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: 09-BOR-641**

**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 March 10, 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 March 10, 2009.

It should be noted here that the Defendant was notified by certified restricted mail delivery of this hearing on February 12, 2009, and has failed to appear. The hearing is being held in her 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:**

Debbie Roberts, 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:**

DHS-1 Benefic Recovery Referral Screen (BVRF)  
DHS-2 WV Income Maintenance Manual Section 1.2  
DHS-3 Code of Federal Regulations 273.16  
DHS-4 Combined Application and Review Form dated February 21, 2008  
DHS-5 Rights and Responsibilities form signed February 21, 2008  
DHS-6 Letter to Employer LMH, Inc. dated May 28, 2008 and income verification  
DHS-7 Food Stamp Claim Determination form  
DHS-8 WV Income Maintenance Manual Section 2.2  
DHS-9 WV Income Maintenance Manual Section 20.6  
DHS-10 Notification letter dated October 30, 2008  
DHS-11 Copy of Postal Service form signed by ----- October 31, 2008  
DHS-12 WV Income Maintenance Manual Section 20.2

#### **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 February 6, 2009. The Department contends that the Defendant has committed an Intentional Program Violation and made a fraudulent statement or misrepresentation regarding her earned income from [REDACTED] 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 October 31, 2008, the Department sent the Defendant a Notification of Intent to Disqualify (DHS-10) form, indicating that the Department had reason to believe she intentionally violated a Food Stamp Program rule. The form also included the following:

The agency believes that ----- intentionally violated the food stamp program by: failed to report at application that you were employed for [REDACTED] The evidence to prove this allegation consists of verification received from employer.

- 3) The Department presented evidence to show that the Defendant initiated an application for Food Stamps on February 7, 2008, and finalized the application on February 21, 2008 (DHS-4, DHS-5) at which time she indicated to the Department that she resided in a one person household. She reported that she had been working at [REDACTED] until she was injured, and last worked there on February 4, 2008. She provided a medical statement from her physician indicating she was to take off work until healed, and reported she planned to return to work "when able". The Department also recorded in case comments (DHS-4) that she "claims no income". The Defendant signed the Rights and Responsibilities form indicating the information she provided was correct and truthful. The Department approved benefits from February 7, 2008 as a "simplified reporting" household. The Defendant was therefore required to report by the 10<sup>th</sup> calendar day of the following month when her total gross earned and unearned income exceeded the gross income limit of \$973.00.
- 4) The Department subsequently obtained verification of her earnings from [REDACTED] (DHS-6) which shows she received a pay check on February 22, 2008 in the amount of \$46.28. The verification shows this was for 6.050 hours of employment over a two week period. It does not list the pay period involved. The Department contends this shows that she was working when the application was made on February 21, 2008 since she received a pay check the day after the application date. The Defendant also received a pay check on February 8, 2008 in the amount of \$430.75 for 71.980 hours work. The evidence does not show specific dates for the "pay period" to indicate when the Defendant actually worked, and therefore it is impossible to determine whether the Defendant had returned to work by February 21, 2008 when she completed her application.

- 5) The Defendant received another pay day on March 7, 2008 in the amount of \$293.76 for 38.400 hours in another two week period, which is about half the pay she would normally receive for a two week period. This appears to show that the Defendant was not working for a period of time in February 2008 and returned to work at some point. Although it is conceivable that the Defendant may have returned to work by February 21, 2008 when she completed her application for assistance, the evidence does not provide specific dates for the pay period and therefore it is impossible to determine whether the Defendant had returned to work at that time.
- 6) 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.
- 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) The Defendant clearly reported to the Department during the February 2008 application (DHS-4) that she was employed with McDonald's and planned to return to work as soon as possible. She reported that she last worked there on February 4, 2008. Although the Department recorded that the Defendant "claims no income", it is clear from the case comments that the

Defendant may have been due to receive a pay check during the month of application and this was not considered.

- 4) Although it appears the Defendant may have returned to work the latter part of February 2008, no evidence was presented to show convincingly that the Defendant had returned to work on February 21, 2008 when she completed the Food Stamp application.
- 5) Although it is appears from this evidence that an overpayment may have occurred due to the Defendant's earnings not being considered by the Department, it is not clear that the Defendant committed an Intentional Program Violation.

**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 26th Day of March, 2009**

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**Cheryl Henson  
State Hearing Officer**