



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

April 21, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held April 3, 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 demonstrated that you intentionally made false or misleading statements 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 **uphold** 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-664

**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 April 13, 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 April 3, 2009.

It should be noted here that the Defendant was notified by first class mail delivery of this hearing on March 13, 2009 and has failed to appear. The Defendant is currently receiving benefits from the Department and her address has been validated. The hearing was previously scheduled for March 12, 2009; however it was continued at the request of the Defendant. 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:

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 February 6, 2009
- D-3 Food Stamp Determination Forms
- D-4 Case Comments from Rapids
- D-5 Case Comments from Rapids
- D-6 Employee Wage Data dated December 4, 2008
- D-7 Statement from the Defendant
- D-8 WV Income Maintenance Manual Chapter 10 Appendix A
- D-9 WV Income Maintenance Manual Section 9.1
- D-10 Case Comments dated February 28, 2008
- D-11 Combined Application and Review Form dated February 28, 2008
- D-12 WV Income Maintenance Manual Section 1.2
- D-13 WV Income Maintenance Manual Section 20.2
- D-14 WV Income Maintenance Manual Section 20.6
- D-15 Notification of Intent to Disqualify dated December 16, 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 February 10, 2009. The Department contends that the Defendant has committed an Intentional Program Violation and made a fraudulent statement or misrepresentation regarding her living arrangements 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 December 16, 2008 the Department sent the Defendant a Notification of Intent to Disqualify (D-15) form, indicating that the Department had reason to believe she violated the Food Stamp Program by intentionally violating a Food Stamp Program rule. The form included the following pertinent information:

You failed to report you live with your parents and you received food stamp or SNAP benefits you were eligible to receive. Under food stamp policy: If you are under age 22 and live with your parents, you cannot receive food stamps or SNAP benefits.

- 3) The Department presented evidence to show that the Defendant applied for SNAP food stamp benefits on February 28, 2008 (D-11). At that time, she reported (D-10) she lived alone in a house owned by her father that her grandmother once lived in, and paid no rent. She stated her father pays the utilities for her.
- 4) The Defendant applied for WV Works Cash Assistance on October 2, 2008. The Department worker completed a home visit on October 3, 2008 as a result of the application, and discovered that the Defendant did not live where she reported in February 2008. The worker recorded the following pertinent information in her case comments (D-4):

Worker went with WW0319 on home visits. We stopped by the address that ----- reported that she lives at. Her grandfather answered the door and reported that ----- does not live with him. He reported that ----- lives with her father. He pointed down over the hill to the home that she lives in. Worker went to that home and nobody answered the door. It appears that ----- lives with her parents. Her grandfather verified the phone number.

- 5) The Defendant sent the Department a letter (D-7) on October 8, 2008 in which she makes the following pertinent comments:

I have enclosed proof of address. I didn't lie to you about my address or #phone. I did tell you that I lived with my grandpa because my mom said it would be the best. But I guess it wasn't. I have enclosed Mom/Dad's check stubs and their bills. But really you shouldn't use that but do if you have too [sic]. I just wanted to say I hope you understand my condition. I am living with mom and dad...

Although the timeframe for this living arrangement is not clearly stated, the fact that the Defendant intentionally concealed information in order to receive food stamps is very clear.

- 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:
- 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.
- 8) 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)
- 9) 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.
- 10) 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. The Defendant's own statements in her letter to the Department, along with corroborating evidence, support that she intentionally withheld or concealed facts about her circumstances in order to receive food stamps.
- 3) Evidence is also clear in that the Defendant was well informed of her responsibility to report her circumstances completely and truthfully during application and review.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of April, 2009.

**Cheryl Henson
State Hearing Officer**