



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 13, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 18, 2009. Your hearing request was based on the Department of Health and Human Resources' determination that you committed an Intentional Program Violation, and their proposal to establish a Food Stamp repayment claim against your household in the amount of \$1104.00.

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 that 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). When an assistance group has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing a claim. (West Virginia Income Maintenance Manual Chapter 20.2).

Information submitted at your hearing reveals that the Department has shown clearly and convincingly that you committed an Intentional Program Violation. In addition, although the evidence submitted supports that you may have been over-issued food stamp benefits, the amount of the over-issuance, if any, is not clear.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to disqualify you from food stamp eligibility for one year due to an Intentional Program Violation; however, I rule to **reverse** the Agency's establishment of a food stamp repayment claim against your household in the amount of \$1104.00.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Andrew Petitt, Mercer DHHR

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

-----,

Defendant,

v.

**Action Number: 09-BOR-488 (ADH)
09-BOR-728 (FS Repay)**

**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 5, 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 February 18, 2009 on a timely appeal filed December 30, 2008.

II. PROGRAM PURPOSE:

The program entitled **Food Stamps** is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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 food coupons to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

-----, Claimant/Defendant
-----, Claimant/Defendant's husband
-----, Claimant/Defendant's father

Andrew Petitt, Department Representative

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 Agency is correct in its proposal to impose a penalty for Intentional Program Violation and to establish and seek repayment of a Food Stamp claim in the amount of \$1104.00.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 20.2, 9.1, 10.3, 10.4, 2.2, Appendix A & B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits for Administrative Disqualification issue:

- D-1 WV Income Maintenance Manual Section 9.1
- D-2 WV Income Maintenance Manual Section 10.3
- D-3 Combined Application Form (CAF) dated February 10, 2004
- D-4 Letter to Employer dated August 4, 2004
- D-5 WV Income Maintenance Manual Section 20.2
- D-6 Letter to Employer dated August 3, 2004
- D-7 Report of Overpayment Determination for January 2004
- D-8 Report of Overpayment Determination for February – May 2004
- D-9 Witness statement dated June 2, 2005
- D-10 Case Comments from Rapids
- D-11 Case Comments from Rapids

Department's Exhibits for Food Stamp Repayment issue:

- D-1 Report of Overpayment Determination for January – May 2004
- D-2 Food Stamp Issuance History
- D-3 Food Stamp Allotment Determinations
- D-4 Letter to Employer dated August 4, 2004
- D-5 Total Monthly Income Breakdown
- D-6 Letter to Employer dated August 3, 2004
- D-7 WV Income Maintenance Manual Section 10.4
- D-8 WV Income Maintenance Manual Section 2.2
- D-9 WV Income Maintenance Manual Section 20.2
- D-10 Food Stamp Calculations Worksheets
- D-11 WV Income Maintenance Manual Appendix A
- D-12 WV Income Maintenance Manual Appendix B
- D-13 Basis Of Coupon Issuance October 1, 2003

Defendant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Defendant completed a Food Stamp application November 18, 2003 at the [REDACTED] County DHHR office, during which she reported that her boyfriend, a member of her household, was self employed doing odd jobs for her father and had monthly earnings of \$370.00. At the time of this application, she reported herself and her boyfriend as the only household members. No other income was reported.
- 2) On February 10, 2004 (D-3) she completed a review in the [REDACTED] County DHHR office. She signed the Rights and Responsibilities form (D-3) indicating she understood the following:
 - 6) I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not receive Food Stamp benefits as follows: First offense – one year; Second offense – two years; Third Offense – permanently. In addition, I will have to repay any benefits received for which I was not eligible.
 - 9) I understand that if I receive Food Stamp benefits for an adult who is working, the only requirement I have to report changes is when my total household income increases to above 130% of the Federal Poverty Level (FPL). I also understand that I will be notified of what this amount is and that I must report this to the local DHHR office by the 10th of the month after the increase happens. I understand that none of the other Food Stamp reporting requirements listed on this form apply to me when there is a working adult included in my Food Stamp benefits.
 - 44) I understand, if I give incorrect or false information or if I fail to report changes that I am required to report, I may be required to repay any benefits I receive. I may also be prosecuted for fraud and I understand that any information given is subject to verification by an authorized representative of the DHHR.
- 3) She reported three people in her home, including herself, her boyfriend, -----, and their child during the February 10, 2004 review with the Department. At that time, the Department's case worker recorded (D-10) that the Defendant reported "no income", and that she "had not lost or quit a job in the last 60 days". She also recorded that the Defendant stated "----- does odd jobs for her ftr (father)" and "he gives them no money, but that he pays her bills directly". There is no mention either on the review application (D-3) or the case comments (D-10) of regular employment being reported for her boyfriend. At this time, the Department removed the self-employment income of \$370.00 since the Defendant reported that they receive no money directly.

- 4) The Defendant signed a written statement on June 2, 2005 (D-9) indicating the she reported when her husband started working for [REDACTED] Inc. In this statement, she contends that she called the [REDACTED] County DHHR Office and reported the income, and that in April 2004 she moved in with her father and was not living with her husband.
- 5) The Department verified (D-4) the Defendant's boyfriend began work with [REDACTED] on November 24, 2003 and worked there until March 12, 2004. He received the following pay stubs from this employer:

12-04-03	\$352.75	01-01-04	\$274.13	02-05-04	\$349.56	03-04-04	\$248.63
12-11-03	\$391.00	01-08-04	\$410.13	02-12-04	\$371.88	03-11-04	\$214.63
12-18-03	\$378.25	01-15-04	\$333.63	02-19-04	\$340.00	03-18-04	\$144.50
12-24-03	\$323.00	01-22-04	\$131.75	02-26-04	\$274.13		
		01-29-04	\$335.75				

The Department also verified that he began work for [REDACTED] on March 22, 2004 and worked there until May 10, 2004. He received the following pay stubs from this employer:

04-16-04	\$901.58	05-07-04	\$832.28
04-30-04	\$727.02	05-28-04	\$428.18

- 6) The Department contends that the Defendant intentionally withheld the information about her boyfriend's employment during the February 10, 2004 review application, and therefore committed an Intentional Program Violation. The Department also contends that a food stamp overpayment occurred as a result in the amount of \$1104.00 for the period of January 2004 through May 2004.
- 7) The Defendant contends that she and her boyfriend were having problems during this time, and she "didn't feel the need" to report every time she moved out of her boyfriend's home and into her father's home. She stated around this time she moved out every week or so and would have been calling the Department "every week". She stated she doesn't remember everything about that timeframe but that if he was working she would have reported it.
- 8) West Virginia Income Maintenance Manual Chapter 20.2 states that when an 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 (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the entitlement the assistance group received and the entitlement the assistance group was entitled to receive. Referrals are made for all over issuances, regardless of the dollar amount. Claims are not written for under \$50 unless there is a liable debtor receiving Food Stamps at the time the claim is written, the error is discovered as the result of a QA review, or it is an IPV claim.
- 9) West Virginia Income Maintenance Manual Chapter 20.2 states in pertinent part:

2. IPV Claims

IPV's include making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, Food

Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.

NOTE: When determining the amount of over-issuance due to the failure of the household to report earned income in a timely manner, the amount of benefits the client *should* (my emphasis) have received is computed without applying the earned income disregard to any portion of the income the client did not report.

10) WV Income Maintenance Manual Section 2.2 (revised 11-03) states in pertinent part:

FOOD STAMPS

B. REPORTING REQUIREMENTS

Reportable changes must be reported within 10 days of the date the change becomes known to the AG.

In determining eligibility and benefit amount, reportable changes include, but are not limited to:

Income:

Income reporting requirements vary depending upon 2 factors; the presence of at least 1 WV WORKS recipient in the FS AG and the type of income, earned or unearned. The Chart below outlines these factors and lists the client's income reporting requirements.

	INCOME	REPORTING	REQUIREMENTS	
	INCOME - EARNED, WITH OR WITHOUT UNEARNED	INCOME - UNEARNED ONLY	INCOME - EARNED AND/OR UNEARNED	INCOME - NONE
WV WORKS RECIPIENT IN FS AG	Earned - Changes of more than \$100 Unearned - Changes of more than \$50	Earned - Within 10 days of knowledge of onset Unearned - changes of more than \$50	Earned - Changes of more than \$100 Unearned - Changes of more than \$50	Earned or Unearned - Within 10 days of onset
NO WV WORKS RECIPIENT IN FS AG	When total gross earned and unearned income for the Income Group exceeds 130% FPL - by the 10 th calendar day of the month following the month in which the change occurs.	Earned - Within 10 days of knowledge of onset Unearned - Changes of more than \$50	When total gross earned and unearned income for the income group exceeds 130% FPL - by the 10 th calendar day of the month following the month in which the change occurs.	Earned or Unearned - Within 10 days of onset

11) WV Income Maintenance Manual Chapter 10.3 states in pertinent part:

10.3 CHART OF INCOME SOURCES

The following chart lists sources of income. The list is not all inclusive, so all other payments from any source must be evaluated. The sources are listed in the left column. The various programs are listed in the columns to the right.

The chart indicates if the source of income is counted and, if so, indicates if the income is earned, self-employment or unearned. If special conditions apply, there is a narrative in the appropriate program column.

Any source of income may be received in a lump sum payment. For instructions on treatment of a lump sum payment, refer to the appropriate program section.

SOURCE OF INCOME	FOOD STAMPS
CC. EMPLOYMENT (Continued)	
2. Self- Employment	2. Earned. This includes the new proceeds from the sale of capital goods and equipment.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in that Intentional Program Violations include making false or misleading statements, misrepresentations, or concealing or withholding information. It is clear that the Defendant was aware of her boyfriend's employment with [REDACTED] on February 10, 2004 when she completed the review. She clearly withheld the information, and by knowingly doing so, has committed an Intentional Program Violation.
- 2) Policy is also clear in that when determining the amount of over-issuance due to the failure of the household to report earned income in a timely manner, ***the amount of benefits the client should have received is computed*** without applying the earned income disregard to any portion of the income the client did not report. Therefore, to determine the correct overpayment amount, the Department is required to figure the amount the client would have received had the information been available at the time of the November 18, 2003 application and February 10, 2004 review. In determining this amount, the Department is to disallow the earned income disregard when computing eligibility, but follow all other computation rules per policy.

- 3) Policy is clear that for food stamp cases involving no WV Works recipient in the assistance group and where the only income in the home is “earned”, the household is required to report income changes when the total gross earned income for the income group exceeds 130% of the Federal Poverty Level. When this occurs, the household is required to report the change by the 10th calendar day in the month following the month in which the change occurs.
- 4) In this instance, the Defendant’s boyfriend did not start the employment with [REDACTED] until November 24, 2003 which is after the November 18, 2003 application. The Defendant was receiving food stamps based on her boyfriend performing odd jobs – considered self-employment. Therefore, according to policy, the Defendant was required to report the change if the household’s total gross earned income exceeded 130% of the Federal Poverty Level (FPL), or \$1628.00. She would have been required to report the change by the 10th calendar day following the month in which the change occurred.
- 5) The Defendant’s earned income for the month of December 2003 was \$1815.00, which exceeds the 130% FPL for a family of three. The Defendant was required to report this change by January 10, 2004, which would have affected her food stamp benefits beginning in February 2004. Therefore, the timeframe for considering overpayment is February 2004 through May 2004, not January 2004 through May 2004 as the Department contends.
- 6) It is also clear in that the Department has not determined the amount the Defendant “should have received” according to policy. When the Defendant completed her review in February 2004 policy holds that the Department is to use the earnings pay stubs received from the date of review and the prior thirty days to arrive at a monthly amount. They clearly did not do this, and therefore the calculations are incorrect.
- 7) The Department has shown clearly and convincingly that the Defendant committed an Intentional Program Violation by knowingly withholding information about her boyfriend’s employment during the February 2004 review in order to receive additional food stamps.
- 8) In regard to the Food Stamp Repayment Claim - although it appears the Defendant may have been over-issued food stamps for a period of time, the Department’s calculations in the amount of \$1104.00 are in error, and therefore cannot be upheld.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency’s proposal to impose an Intentional Program Violation penalty for one year against the Defendant. I rule to **reverse** the Food Stamp Repayment Claim in the amount of \$1104.00. The agency is not precluded from recalculating the claim according to policy.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th Day of March, 2009

**Cheryl Henson
State Hearing Officer**