



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 30, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held April 22, 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 showed 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 **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-992

**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 22, 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 hearing was convened on April 22, 2009.

It should be noted here that the Defendant was notified by regular mail delivery of this hearing on March 25, 2009, and has failed to appear. Her mailing address has been validated. 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 Code of Federal Regulations § 273.16
- D-2 Benefit Recovery Referral Screen dated March 11, 2009
- D-3 Food Stamp Claim Determination Form and accompanying documents
- D-4 WV DHHR Fraud Referral Form (IFM-1)
- D-5 Income Verification from [REDACTED] Partnership dated 10/1/08
- D-6 Combined Application and Review Form dated July 31, 2008
- D-7 Case Comments dated July 31, 2008
- D-8 WV Income Maintenance Manual Section 1.2
- D-9 WV Income Maintenance Manual Section 20.6
- D-10 WV Income Maintenance Manual Section 20.2
- D-11 Copies of notices to Claimant from the Department

Claimant's Exhibits:

- DEF-1 Letter from Defendant dated March 31, 2009

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 March 13, 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] Partnership 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 February 20, 2009 the Department sent the Defendant a Notification of Intent to Disqualify (D-11) 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: you failed to report your earned income [REDACTED] in your household at your July 2008 Food Stamp review. Due to the earned income not being reported your household was over issued in food stamp benefits.
- 3) The Department presented evidence to show that the Defendant completed a redetermination review (D-6) for Food Stamps on July 31, 2008, at which time she indicated (D-7) to the Department that she resided in a four person household, and that her husband was still not working. The Department caseworker's recording (D-7) shows the Defendant reported that her mother gives her fifty dollars (\$50.00) per month and that she provided a written statement to that effect. There is no indication in the recording that the Defendant reported that she was working.
- 4) The Department subsequently obtained verification of her earnings from [REDACTED] Partnership, Inc. (D-6) which shows she began work there on March 26, 2008, works 30 hours per week and is paid every two weeks. The address and social security information matches the Department's records for the Defendant. In July 2008 the Defendant received two pay checks from the company totaling eight hundred eighty five dollars (\$885.00). The Defendant has clearly failed to report this at her July 2008 redetermination review.
- 5) The Defendant sent the Hearing Officer a letter received March 31, 2009 (DEF-1). This letter is being noted in the record for the sole purpose of clarifying that the Defendant received her hearing appointment notice. In the letter, the Defendant states "I got this letter through the mail 2day." [sic] The letter will not be addressed as evidence in determining whether the Defendant committed an Intentional Program Violation. She has chosen not to appear for this hearing.
- 6) West Virginia Income Maintenance Manual ' 1.2 (E) states that it is the client's responsibility 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.
- 9) 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 was working for [REDACTED] Partnership when she completed her July 31, 2008 redetermination review. She received two pay checks during that month and this clearly shows that she intentionally withheld the information about her employment during the review in order to receive food stamp benefits.
- 4) The Department was correct in its determination that the Defendant has committed an Intentional Program Violation by failing to report her employment and earnings during her July 31, 2008 review of eligibility.

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 30th Day of April, 2009

**Cheryl Henson
State Hearing Officer**