



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

August 4, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 6, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to establish a Supplemental Nutrition Assistance Program (SNAP) repayment claim against your household.

In arriving at a decision, the State Hearings 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 Supplemental Nutrition Assistance Program (SNAP) is based on current policy and regulations. Some of these regulations state that when an assistance group has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing a claim. All claims, whether established as a result of an error on the part of the Department or the household, are subject to repayment. (West Virginia Income Maintenance Manual, Chapter 20.2 and 7 CFR § 273.18 - Code of Federal Regulations).

Information submitted at your hearing reveals that the Department correctly determined you received SNAP benefits from April 1, 2010 to June 30, 2010 and November 1, 2010 to February 28, 2011, to which you were not entitled due to a customer error, resulting in an over-issuance in the amount of \$1936.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to establish and seek collection of a SNAP repayment claim in the amount of \$1936 for the period of April 1, 2010 to June 30, 2010 and November 1, 2010 to February 28, 2011.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

CC: Erika Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

IN RE: -----,

ACTION NO: 11-BOR-1228

Respondent,

v.

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Movant.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on August 4, 2011, 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 (DHHR.) This fair hearing was convened on July 6, 2011, on a timely appeal filed May 23, 2011.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (SNAP) 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 benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

-----, Respondent

-----, Respondent's Witness

Brian Shreve, Repayments Investigator, Department's Representative

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

This hearing was conducted at the WV Department of Health and Human Resources, [REDACTED] County Office in [REDACTED] WV.

The Hearings Officer placed both participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Agency is correct in its proposal to establish and seek repayment of a SNAP repayment claim due to an agency error.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 20.2.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- M-1 Address information request form sent from the WV Bureau for Child Support Enforcement (BCSE) to the Postmaster of the ----- Post Office on January 17, 2011, and the Postmaster's reply.
- M-2 Print-out from clientservice@theworknumber.com, an on-line employment verification service, dated March 2, 2011.
- M-3 Print-out from the [REDACTED] County (WV) Tax Office indicating Respondent's ex-husband's mailing address as listed on his personal property (vehicle) tax receipt.
- M-4 CMCC screen print from RAPIDS System showing case comments made in Respondent's SNAP case on January 4, 2010 and ACCH screen print from RAPIDS System showing Respondent's mailing address as of January 4, 2010.
- M-5 Screen print from the WV Department of Motor Vehicles indicating Respondent's ex-husband's mailing address on the vehicle registration for his automobile.
- M-6 BVRFB Screen print from RAPIDS System showing referral for recoupment.
- M-7 ES-FS-5, Food Stamp [SNAP] Claim Determination – April 1, 2010 through June 30, 2010 and November 1, 2010 through February 28, 2011.
- M-8 Copy of Income Maintenance Manual Chapter 9.1.A.1.b(2) showing who must be included in a SNAP assistance group (AG).
- M-9 Copy of Income Maintenance Manual Chapter 20.2 showing SNAP overpayment claims and repayment procedures.
- M-10 Copy of Notification of Supplemental Nutrition Assistance Program (SNAP) Overissuance letter, dated May 20, 2011.

Claimant's Exhibits:

- R-1 Final Order from the Family Court of [REDACTED] County, WV, signed on December 16, 2009.

- R-2 Copy of letter from [REDACTED] County office of the WV DHHR to Respondent, dated March 16, 2010.
- R-3 Copy of letter from [REDACTED] County office of the WV DHHR to Respondent, dated December 14, 2010.
- R-4 Copy of letter from [REDACTED] County office of the WV DHHR to Respondent, dated June 14, 2010.
- R-5 Copy of letter from [REDACTED] County office of the WV DHHR to Respondent, dated October 30, 2009.
- R-6 Copy of letter from [REDACTED] County office of the WV DHHR to Respondent, dated October 14, 2010.

VII. FINDINGS OF FACT:

- 1) Department's representative testified that he received information from the WV Bureau of Child Support Enforcement (BCSE), [REDACTED] County Office, indicating that Respondent was living in the same household as her ex-husband. He submitted into evidence a form sent to the Postmaster of Respondent's Post Office asking him or her to verify Respondent's mailing address and an identical form asking him or her to verify her ex-husband's mailing address. The postmaster indicated on the form for Respondent that her mailing address was -----, -----, and on the form for her ex-husband, the postmaster indicated he received his mail at the same address. (Exhibit M-1.) He testified that because of this information, he investigated Respondent's household living arrangements.
- 2) Department's representative submitted into evidence a print-out from theworknumber.com, an on-line income verification service utilized by the US Postal Service, indicating that Respondent's ex-husband worked for the US Postal Service and listed his mailing address as --- --, -----, (Exhibit M-2.) He submitted into evidence the personal property tax receipt for a car owned by Respondent's ex-husband, listing the same address. (Exhibit M-3.) He also submitted into evidence a print out from the WV Department of Motor Vehicles indicating that the car was registered to Respondent's ex-husband, with the same mailing address. (Exhibit M-5.)
- 3) Department's representative testified that Respondent reported moving to [REDACTED] County, West Virginia from [REDACTED] County, West Virginia, in January of 2010. He submitted into evidence a case comment made by a worker at the Customer Reporting Center indicating Respondent had called the center on January 4, 2010 to report the move and to have her case transferred. (Exhibit M-4.) The recording indicates that in March of 2010, Respondent completed a benefits review and added her son to her SNAP assistance group (AG). Department's representative testified that he established the repayment period from the first month after this review was completed until she left the home in June 2010, then from the point that she returned to the home in November 2010 until February 2011, when the ex-husband was added into the assistance group and it was closed due to excessive earned income. He testified that because there were several months in which Respondent moved to [REDACTED] for four months and did not receive SNAP in West Virginia, he had to establish two separate SNAP overpayment claims. He stated that he established these two claims on an ES-FS-5 Food Stamp [SNAP] Claim

Determination form, and calculated the total amount of overpayment for both claims as \$1936. (Exhibit M-7.)

- 4) West Virginia Income Maintenance Manual, Chapter 9.1.A.1.b(2) (Exhibit M-8) states in pertinent part:

The following individuals who live together must be in the same AG, even if they do not purchase and prepare meals together:

...

- Children under age 22, living with a parent.

- 5) West Virginia Income Maintenance Manual, Chapter 20.2 (Exhibit M-9) states in pertinent part:

When an AG (assistance group) has been issued more [SNAP] 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 should have received.

- 6) Respondent testified that she and her ex-husband legally divorced. She submitted into evidence the final divorce decree from the ██████████ County Family Court, dated December 16, 2009. (Exhibit R-1.) She testified that she and her ex-husband live in the home at -----, -----, because she had nowhere else to live. She stated that she has a separate refrigerator and separate food storage space in her home from her ex-husband and child, and they do not purchase or prepare their food together. She submitted into evidence letters from various DHHR eligibility workers that she said knew about her and her ex-husband's living arrangements but approved her SNAP benefits. (Exhibits R-2, R-3, R-4, R-5 and R-6.) Respondent asserted that because she purchases and prepares her food separately from her ex-husband and son, and because DHHR workers had full knowledge of her living arrangements, she should not be obligated to repayment any SNAP benefits. The letters submitted by Respondent do not indicate the Department was aware Respondent was living with her ex-husband. Each of them list only Respondent and her son as members of her household.

VIII. CONCLUSION OF LAW:

- 1) The Department submitted evidence to indicate that in Respondent lived in the home with her ex-husband and her son. Respondent did not dispute this fact in her testimony.
- 2) The fact that Respondent and her ex-husband were divorced has no bearing on this matter. Respondent would have to be included in the same assistance group as her child.
- 3) Policy is clear that if a parent lives in the same home as his or her child under the age of 22, they must be included in the same SNAP assistance group. Therefore, Respondent's son must

be in the assistance group with Respondent, and her ex-husband must be included in the assistance group with the son.

- 4) Policy is clear that if a SNAP assistance group receives more SNAP benefits than it is entitled to receive, a repayment claim must be established.
- 5) The Department's proposal to establish and seek collection of a repayment claim therefore is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to establish and seek collection of a SNAP repayment claim in the amount of \$1936 for the period April 1, 2010 through June 30, 2010, and November 1, 2010 through February 28, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Respondent's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of August, 2011.

**Stephen M. Baisden
State Hearing Officer**