



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

Earl Ray Tomblin
Governor

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

November 30, 2011

-----For: -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your client's hearing held November 21, 2011. Your client's hearing request was based on the Department of Health and Human Resources' proposal to establish a SNAP repayment claim against her.

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 SNAP program is based on current policy and regulations. These regulations provide that a group of individuals who live together, and for whom food is customarily purchased and prepared together must be included in the same SNAP Assistance Group (West Virginia Income Maintenance Manual § 9.1 A).

The information submitted at this hearing revealed that your client and her husband lived together from May 2010 through September 2011, while reporting to the DHHR that they lived separately. As such, she is required by policy to repay the SNAP benefits she received during this time.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to establish a repayment claim against your client's SNAP benefit assistance group.

Sincerely,

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

cc: Erika Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator
-----, [REDACTED] WV

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

-----,

Respondent,

v.

ACTION NO: 11-BOR-1901

**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 November 30, 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. This fair hearing was convened via videoconference and telephone conference call, with Department representatives and Respondent's representatives appearing at the [REDACTED] County Office of the WV Department of Health and Human Resources (DHHR) in [REDACTED] WV, and the Hearing Officer appearing at the [REDACTED] County office of the WV DHHR in [REDACTED] WV, on November 21, 2011, on a timely appeal filed September 13, 2011. This hearing was originally scheduled for October 20, 2011, but was rescheduled at Respondent's request.

II. PROGRAM PURPOSE:

The Program entitled the Supplemental Nutrition Assistance Program, or SNAP, is administered by the West Virginia Department of Health & Human Resources (DHHR.)

The purpose of the Supplemental Nutrition Assistance 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:

-----, -----, Respondent's Representative
-----, Respondent
-----, Respondent's husband and witness
-----, Respondent's daughter and witness
-----, Respondent's son and witness

Brian Shreve, Repayment Investigator, Department's representative
Lorintha Hiles, Department's witness

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

All participants offering testimony were placed under oath.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department's proposal to establish a repayment claim against Respondent's SNAP benefits is correct.

V. APPLICABLE POLICY:

WV Income Maintenance Manual §9.1.A and §20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Movant's Exhibits:

- M-1 DFA-NEMT-1, Non-Emergency Medical Transportation (NEMT) form dated July 27, 2010
- M-2 DFA-NEMT-1, Non-Emergency Medical Transportation (NEMT) form dated June 9, 2010
- M-3 ES-FS-5 Food Stamp (SNAP) Claim Determination form dated September 8, 2011
- M-4 WV Income Maintenance Manual Chapter 9, section 1
- M-5 WV Income Maintenance Manual Chapter 9, section 1.B
- M-6 WV Income Maintenance Manual Chapter 20, section 2
- M-7 Print-out from the WV Department of Motor Vehicles listing driver's license address information for Respondent's husband
- M-8 Print-out from the WV DHHR indicating the mailing addresses reported by Respondent and her husband
- M-9 Print-out of telephone SNAP review for Respondent's husband, dated March 29, 2011
- M-10 Print-out of telephone SNAP review for Respondent, dated March 29, 2011
- M-11 Print-out from www.whitepages.com for Respondent's husband, dated August 4, 2011

- M-12 Copies of bills from WV American Water and American Electric Power
- M-13 Print-out of case comments from Respondent's SNAP case record, dated April 1, 2010
- M-14 Print-out of case comments from Respondent's SNAP case record, dated April 6, 2011
- M-15 Photograph purported to be that of Respondent's residence
- M-16 Print-out from the WV Department of Motor Vehicles listing vehicle owner's address for a vehicle owned by Respondent
- M-17 Notification of SNAP Over-issuance letter sent to Respondent on September 8, 2011

Respondents' Exhibits:

- R-1 WV Income Maintenance Manual Chapter 9, section 1
- R-2 WV Common Chapters Manual section 710.15, Pre-Hearing Rights
- R-3 WV Common Chapters Manual section 710.20, Hearing
- R-4 Copy of *Miller et al v. Lipscomb*, (SD WV, 1987)
- R-5 Print-out of case comments from Respondent's SNAP case record, dated May 13, 2009 to September 20, 2011
- R-6 Computer Application Form signed by Respondent on May 13, 2009
- R-7 Print-out of telephone SNAP review for Respondent, dated March 29, 2011
- R-8 Copy of written receipt from Respondent's son to Respondent dated April 22, 2011
- R-9 Copy of Medical I.D. Card for Respondent's husband for month of October 2011
- R-10 Print-out from WV Department of Motor Vehicles' web site entitled "Driver's License Information"
- R-11 Copy of personal property tax receipt and vehicle registration card for a vehicle belonging to Respondent, and copy of Medical I.D. Card for Respondent's husband for month of November, 2011
- R-12 Copy of application form for post office box rental at [REDACTED] Post Office, [REDACTED] WV, dated September 17, 2010 and signed by Respondent's husband, listing physical address as -----
- R-13 Copy of property tax receipt for Respondent's home, listing home owners as Respondent and daughter, for tax year 2010
- R-14 Copy of electricity bill for Respondent, dated September 19, 2011
- R-15 Copy of information sheet entitled "What are your rights in a fair hearing?"

VII. FINDINGS OF FACT:

- 1) In June, 2011, an employee of the WV DHHR referred this matter to the Investigations and Fraud Management of the WV DHHR after he or she noted that Respondent took her husband, from whom she had reported to be separated, to physician's appointments for nearly every office visit, as reflected in her husband's reimbursement requests in the Non-Emergency Medical Transportation (NEMT) Program. (Exhibit M-1 and Exhibit M-2.) The Department investigated this matter, and concluded that Respondent and her husband lived together. A repayment claim was established against Respondent for the months of May, 2010 to September, 2011.

- 2) Respondent was informed by a letter dated September 8, 2011, that a SNAP repayment claim had been established against her. She requested a fair hearing to protest the establishment of a repayment claim on September 13, 2011.
- 3) Department's representative argued that the Department has correctly established a repayment obligation. He submitted into evidence a print-out from the WV Department of Motor Vehicles indicating that Respondent's spouse renewed his driver's license and listed on the license that his physical address is -----, [REDACTED] WV. (Exhibit M-7.) This is the address at which Respondent receives her public assistance benefits. Department's representative submitted a SNAP telephone review form for Respondent's spouse, dated March 28, 2011 (Exhibit M-9), wherein he stated his physical address was -----, and his telephone number was [REDACTED] which is Respondent's telephone number. This review form also states that Respondent and her spouse share a checking account. Department's representative also submitted a telephone review form signed by Respondent on March 28, 2011 (Exhibit M-10) listing the identical physical address and telephone number, and also listing the joint checking account. He submitted a print-out from www.whitepages.com, which indicates that Respondent's telephone number is listed to her spouse. Department's representative submitted a water bill that was in the name of both Respondent and spouse, dated April 12, 2011.
- 4) Respondent acknowledged that her spouse did live on her property at ----- during the repayment period of May 2010 to September 2011, and acknowledged that they had a checking account together. She testified that he did not live in her home, but in a camper which sat on her lot. She testified that her husband had a drinking problem, and she would not allow him to live in her home while he was abusing alcohol. She stated that during the repayment period, her spouse stayed in the camper on her property, and would take trips to visit family in [REDACTED] and [REDACTED]. She testified that the camper has been removed from her property and her spouse now stays with her daughter, whose home is on a lot which adjoins hers. Respondent testified that her spouse received telephone calls at her home. She testified that there was no water service in the camper in which he stayed, and that he bathed at his daughter's home. She stated that her daughter washed his clothes, but she occasionally washed some clothing articles. Respondent stated that her home was her spouse's home as well, and he would be welcomed home if he were to quit drinking.
- 5) Department's representative called a rebuttal witness, an Economic Services Worker who took a Medicaid application for Respondent's spouse in early 2010. The witness testified that Respondent told her that Respondent and spouse were separated, but that "he lived behind her and he took care of her and she took care of him."
- 6) Respondent's representative submitted evidence to indicate that Respondent's spouse rented a post office box in his own name, [REDACTED] WV. (Exhibit R-12.) The application form requires the renter to state his physical address, which is listed as --- --. Respondent's representative submitted into evidence the property tax receipt for ----- . The receipt lists the property owners as Respondent and her adult daughter.
- 7) West Virginia Income Maintenance Manual, Chapter 9.1.A.1(b) states in pertinent part:

Individuals or groups of individuals living with others, but who customarily purchase food and prepare meals separately are an [Assistance group or] AG. Customarily purchasing and preparing food separately means that, during the certification period, the client actually purchases and prepares his food separately from the others in the household over 50% of the time, except for an occasional shared meal. This occasional sharing for food does not interfere with his separate AG status. EXCEPTION: The following individuals who live together must be in the same AG, even if they do not purchase and prepare meals together:

...

- Spouses are individuals who are married to each other under state law.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that a SNAP recipient may not receive SNAP benefits in a separate assistance group from his or her legal spouse if they live in the same household.
- 2) Department's representative submitted evidence to indicate Respondent and her spouse lived together during the repayment period of May 2010 to September 2011. They shared utilities, they shared liquid assets, and they shared the property at -----.
- 3) Neither Respondent nor her spouse submitted sufficient evidence to support their claim that they had separate residences.
- 4) The Department acted correctly to establish a repayment claim against Respondent.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to establish a repayment claim against.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Respondent's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th day of November 2011.

**Stephen M. Baisden
State Hearing Officer**