



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

December 23, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 8, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to establish a SNAP repayment claim against you.

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 did not provide sufficient evidence to establish a repayment claim against you. As such, you are not required by policy to repay the SNAP benefits you received during the months of July 2011 to October 2011.

It is the decision of the State Hearings Officer to **Reverse** the proposal of the Department to establish a repayment claim against your 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

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

-----,

Respondent,

v.

ACTION NO: 11-BOR-2286

**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 December 23, 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's 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 December 8, 2011, on a timely appeal filed November 3, 2011.

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
-----, Respondent's sister and witness
-----, Respondent's mother and witness

Brian Shreve, Repayment Investigator, Department's representative
Trish Hauldren, WV Bureau of Child Support Enforcement, 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 Declaration of Paternity Affidavit signed by Respondent and -----, dated March 26, 2011
- M-2 Copy of case comments from Respondent's Bureau of Child Support Enforcement (BCSE) case dated June 30, 2011
- M-3 Copy of Referral and Communication form from [REDACTED] County DHHR to [REDACTED] County Bureau for Child Support Enforcement dated June 30, 2011
- M-4 ES-FS-5 Food Stamp (SNAP) Claim Determination form dated October 17, 2011
- M-5 WV Income Maintenance Manual Chapter 9, section 1
- M-6 WV Income Maintenance Manual Chapter 9, section 1.B
- M-7 Bureau of Employment Programs wage match, dated August 15, 2011
- M-8 WV Income Maintenance Manual Chapter 20, section 2
- M-9 Notification of SNAP Overissuance letter sent to Respondent on October 18, 2011

Respondents' Exhibits:

- R-1 Final Child Support Order from the Family Court of ██████ County, WV, dated August 15, 2011
- R-2 Order to Transfer File from the Family Court of ██████ County, WV, dated September 14, 2011
- R-3 Temporary Child Support Order from the Family Court of ██████ County, WV, dated August 11, 2011
- R-4 Water Bill from West Virginia American Water dated September 9, 2011, for -----, with payment receipt attached
- R-5 Electricity bill payment receipts dated September 7, 2011 and October 24, 2011

VII. FINDINGS OF FACT:

- 1) In June, 2011, an employee of the WV Bureau of Child Support Enforcement (BCSE), ██████ County office, reported to Department's Representative that the father of Respondent's youngest child, -----, went to that office to establish a child support payment plan, and while there he reported that he and Respondent were living together. 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 July 2011 to October 2011 in the amount of \$2672. (Exhibit M-4.)
- 2) Respondent was informed by a letter dated October 18, 2011, that a SNAP repayment claim had been established against her. (Exhibit M-9.) On November 3, 2011, she requested a fair hearing to protest the establishment of a repayment claim.
- 3) Department's representative argued that the Department has correctly established a repayment obligation. He submitted into evidence a paternity affidavit dated March 26, 2011, indicating ----- and Respondent declared that he was the father of Respondent's youngest child. (Exhibit M-1.) Department's representative submitted a copy of a communique from the ██████ County BCSE worker to a supervisor in ██████ County which stated, "Received word [Respondent] is and has been living with the youngest child's father since about 3 weeks after the birth of this child. [-----] works . . . and has been giving her money." (Exhibit M-3.) He also submitted a BCSE case recording which stated, "[-----] in office this date to make an application to pay [child support]. He also states that [Respondent] is living with him for now but expected her to move out soon. She has another case in [child support] and [public assistance benefits] . . . and is using a ██████ County address . . ." (Exhibit M-2.)
- 4) Department's Representative stated that policy requires natural or adoptive children under the age of 22 years of age to be included in the assistance group (AG) of a parent who lives in the home. Therefore, he argued, ----- had to be included in the SNAP assistance group of his daughter and Respondent, and his income would count against the SNAP benefit amount. Department's Representative submitted into evidence a print-out from the WV Bureau of Employment Programs verifying his income, which was too high for Respondent's assistance group to receive SNAP benefits. (Exhibit M-7.)

- 5) West Virginia Income Maintenance Manual, Chapter 9.1.A.1(b) (Exhibit M-5) 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:

...

Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent. There is no required maximum/minimum amount of time the child must spend with a parent for the child to be included in the SNAP AG. If no one is receiving any benefits from the Department for the child, it is assumed that the living arrangements are not questionable and the child is added to the AG that wishes to add him. If the child is already listed in another AG or the other parent wishes to add the child to his AG, the parents must agree as to where the child "lives" and, ultimately, to which AG he is added. Where the child receives the majority of his meals, or the percentage of custody must not be the determining factor in which parent receives SNAP for the child.

- 6) West Virginia Income Maintenance Manual, Chapter 9.1.A.1(b) (Exhibit M-6) states in pertinent part:

The income group includes all AG members and all individuals who live with the AG and would otherwise be included in the AG if not ineligible, disqualified or excluded by law. This includes ineligible aliens, those excluded by law, disqualified due to an IPV or trafficking SNAP for a controlled substance and those who fail to meet the enumeration requirement.

- 7) West Virginia Income Maintenance Manual, Chapter 20.2 (Exhibit M-8) states in pertinent part:

When an AG has been issued more SNAP benefits 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 SNAP entitlement of the AG and the SNAP allotment the AG was entitled to receive.

- 8) Respondent testified that she had never lived with ----. She stated that he worked night shifts at his job, so she would come to his home with their baby so that he could spend time with her. She stated she would stay for one or two nights and then go home. She stated she lived in a mobile home in [REDACTED] County, WV, with her three children. Respondent called two witnesses, her mother and her sister, who testified that she lived in her [REDACTED] County home. Respondent submitted into evidence the Final Order from the Family Court of [REDACTED] County establishing a child support obligation for ----, dated

August 15, 2011. (Exhibit R-1.) She submitted into evidence a temporary order from the Family Court of ██████ County, dated August 11, 2011, also establishing a child support obligation. (Exhibit R-3.) This temporary order lists the mailing address of the Respondent as a post office box in ██████ County), WV, and the mailing address of ----- as a rural route box in ██████ County), WV.

- 9) Department's representative called a rebuttal witness, the ██████ County BCSE Worker who wrote the June 30 communiqué and recording. (Exhibits M-2 and M-3.) She testified that ----- came to the BCSE office on June 30 and met with her. She stated that he told her Respondent and he lived together, and he gave her money. She stated that he showed her cancelled checks made out to Respondent to verify he had been giving her money. Department's representative did not submit copies of these checks into evidence.

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 child if they live in the same household.
- 2) Department's representative submitted evidence in the form of an interdepartmental communique and a case recording dated June 30, 2011, from a worker in the WV Bureau of Child Support Enforcement, Lincoln County office. These items report the father of Respondent's baby came to the ██████ County BCSE office and told the worker that he and Respondent were living together in ██████ County, but she was preparing to move to a residence in ██████ County.
- 3) Respondent submitted evidence in the form of a court order listing herself and the baby's father as having different mailing addresses in separate West Virginia counties, and testimony from two witnesses, family members who stated that Respondent lived in ██████ County, WV, and her household consisted of herself and her three children.
- 4) Neither the Department nor the Respondent proved by clear and convincing evidence whether or not Respondent lived with her baby's father. However, the burden of proof is first on the Department to prove that its action was correct. The Department did not meet its burden of proof.
- 5) The Department did not have sufficient evidence to establish a repayment claim against Respondent.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Respondent's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd day of December 2011.

**Stephen M. Baisden
State Hearing Officer**