



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street, West  
Charleston, WV 25313**

**Earl Ray Tomblin  
Governor**

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

May 17, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 28, 2011 and completed on May 12, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to establish a Supplemental Nutrition Assistance Program (SNAP) repayment claim against your household.

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 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 Agency or the household, are subject to repayment. (West Virginia Income Maintenance Manual Chapter 20.2) Additional policy states that spouses who live together must be included in the same assistance group. (West Virginia Income Maintenance Manual Chapter 9.1.A)

Information submitted at your hearing is not sufficient to support that your husband lived in your household during October and November 2010, and as such, an overpayment cannot be established.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency to establish and seek collection of a SNAP claim in the amount of one thousand five hundred eighty-six dollars (\$1586.00).

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review  
Jennifer Butcher, [REDACTED] DHHR

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

-----,

**Respondent,**

v.

**Action Number: 11-BOR-851**

**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 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 convened on April 28, 2011 and completed on May 12, 2011 on a timely appeal filed March 14, 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 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:**

-----, Respondent  
-----, Respondent's witness and representative  
-----, Respondent's witness

Jennifer Butcher, Movant's representative  
Tamara Smith, Movant's witness  
Tammy Drumheller, Movant's witness

Presiding at the hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Movant is correct in its proposal to establish and seek repayment of a SNAP claim.

#### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Chapters 9.1 and 20.2

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Movant's Exhibits:**

- D-1 Benefit Recovery Referral information
- D-2 Case comments and household information from Department's data system
- D-3 Case comments from Department's data system and Medicaid application dated June 10, 2010
- D-4 Case comments from Department's data system dated July through October 2010 and Self-completed application form dated September 29, 2010
- D-5 Income Verification from [REDACTED] dated November 5, 2010, Utility bill Dated October 21, 2010, and Department of Motor Vehicle's data system information
- D-6 Case comments from Department's data system dated November 2010
- D-7 West Virginia Income Maintenance Manual Section 1.2.E
- D-8 West Virginia Income Maintenance Manual Section 2.2.B
- D-9 West Virginia Income Maintenance Manual Section 2.2
- D-10 West Virginia Income Maintenance Manual Section 2.2.B.4
- D-11 Food Stamp Claim Determination forms and supporting documentation

##### **Respondent's Exhibits:**

- C-1 Seven (7) pictures of the Respondent's residence and surrounding apartments

#### **I. FINDINGS OF FACT:**

- 1) The Movant established a SNAP Repayment Claim (D-11) on March 8, 2011 against the Respondent for the period of October and November 2010 in the amount of one thousand five hundred eighty-six dollars (\$1586.00). The Respondent voluntarily closed her SNAP case on November 10, 2010 by contacting the Customer Service Center, a telephone accessed reporting center available to customers of the Movant for reporting purposes. The case comments in the Movant's data system (D-6) do not document whether the Respondent supplied a reason for her request for closure.

- 2) The Movant contends that the father of the Respondent's children, ----, was living in the Respondent's home during the months of October and November 2010, and that she did not report him or his income for that period, which caused the household to be over-issued SNAP for the period.
- 3) The Movant presented evidence (D-2) in the form of case comments entered into its data collection system on May 6, 2010, which shows the Respondent came into the [REDACTED] West Virginia, Department of Health and Human Resources' office in [REDACTED] West Virginia, on May 6, 2010 and completed a SNAP application interview. The comments also document that the Respondent indicated at that time that her husband, ----, no longer lived in her household. She also is documented as indicating that ---- left the home on April 30, 2010, but that he continues to pay for medical insurance, rent and utilities for the family. The Respondent reported at that time that she has no income.
- 4) Additional evidence (D-3) shows that the Respondent applied for medical coverage for her children on June 14, 2010, but then rescinded her medical coverage on July 12, 2010 because she did not wish to cooperate with the Child Support Unit, which is a requirement for receipt of the medical coverage, because her husband was paying for the utilities and the children's needs. She again reported that ---- did not live in her household.
- 5) Additional evidence (D-4) shows that the Respondent completed a SNAP review interview by telephone on October 19, 2010 at which time she reported that just she and her four (4) children lived in the household. Case comments (D-4) indicate that the case worker documented that the Respondent reported that ---- "pays all living expenses although he does not live in home." The Movant purports that a request for investigation was made at that time to have its Front-End Fraud Unit investigate to determine whether ---- was living with the Respondent.
- 6) Tamara Smith, and Income Maintenance Specialist employed with the [REDACTED] West Virginia, Department of Health and Human Resources' office in [REDACTED] West Virginia, testified that she is the case worker who interviewed the Respondent on October 19, 2010. She stated that, during the interview, she questioned the Respondent about the living arrangements involving the husband, and that she recalled the Respondent telling her that he sometimes stayed downstairs in the building, and that at some point he stayed in an upstairs apartment, and that occasionally he had stayed in her home. She testified that she researched the data systems and found that ---- was still utilizing the same physical address as the Respondent. She added that the Respondent and ---- had previously applied and been denied certain benefits due to ----'s income being excessive on numerous occasions dating back to May 2009. She added that these findings, along with her finding that the Respondent closed out her medical coverage for the children in order to avoid cooperation with the Child Support Unit, caused her to question whether ---- was living in the Respondent's home, and resulted in her requesting the investigation into the household composition. Ms. Smith stated that after the investigation was completed, she entered the information into the Movant's computer system on November 11, 2010, even though the SNAP case had already been voluntarily closed by the Respondent on November 10, 2010, so that the income information and other circumstances would be documented.
- 7) Additional evidence (D-5) shows that the Movant verified that ---- is employed with [REDACTED] Construction Company, as well as his income verification from August 2008 through October 2010.

- 8) Additional evidence (D-5) shows the Respondent's electric utility bill is listed in the name of ----, at the Respondent's listed address. The Movant purported this to be the Respondent's husband's name; however, it was determined during the course of the hearing that ---- is actually ----'s father, and that the electric bill is active in his name.
- 9) Additional evidence (D-5) shows that ---- registered a vehicle on August 5, 2010 utilizing the Respondent's address of ----, [REDACTED] West Virginia.
- 10) Tammy Drumheller, a Front-End Fraud Unit Investigator for the [REDACTED] County, West Virginia, Department of Health and Human Resources' office in [REDACTED] West Virginia, testified that she investigated the household composition in this matter. She stated that she went to the property and could not find anyone who could substantiate that ---- lived with the Respondent. She stated that she found that ----'s father owned the property. She stated that she looked through the doors in the downstairs area where ---- was purported to be staying at times, and it did not look like anyone lived there. She stated that she found that ---- received his unemployment compensation payments at the Respondent's address. She stated that she also found that ---- listed his address with the Department of Motor Vehicles as the same address as the Respondent. Ms. Drumheller added that she later spoke with the Respondent, who told her on November 10, 2010 that ---- was at the home every day and that he sometimes stayed the night. She added that the Respondent called the Customer Service Center later that same day and closed out her case.
- 11) The Respondent contends that ---- did not live in her home during October and November 2010. She testified that ---- came to her home almost every day during that period of time to see his children, but that he stayed either in a downstairs room, or sometimes in another apartment in the building she lived in. She clarified that on very rare occasion, maybe once every week or so, he would stay the night when the children were upset. She added that none of his personal belongings were at her home during the time in question. She stated that after Thanksgiving they started to "get along" better, but that they still needed time to work their problems out. She stated that she closed her case on November 10, 2010 after speaking with Ms. Drumheller, even though ---- was not living with her at that time, because Ms. Drumheller made her uncomfortable and kept trying to get her to say that ---- lived in her household.
- 12) The Respondent's husband, ----, testified that he did not live with the Respondent during October and November 2010. He stated that he continued to receive his mail and his pay checks at her address during the separation because he did not have a permanent address. He stated that he stayed downstairs in the basement below her apartment, and in another apartment on the same property, during the time in question. He stated that his father owns the property in which the Respondent lives, which includes many additional apartments. He added that there were other occupants in at least one other apartment in the building. He stated that the property he lived in had a bathroom and kitchen area, along with a bed. He stated that it was not sufficient for children to live in, but it was fine for him. He stated that he and the Respondent started living together again sometime in December 2010.
- 13) ----'s father, ----, testified that his son lived in the basement area below the Respondent's apartment from April 2010 until sometime around December 2010, except for a short timeframe when he stayed at Alkol, West Virginia, at his grandmother's place. He stated that he visited his son during this timeframe one (1) to two (2) times per week, and that he took

propane tanks to him when the weather started getting colder because the room he was staying in was not heated. He stated that his son "lived like a bum for about eight (8) months" in the bottom portion of the building. He added that his clothes were "piled in a heap" in the room. He stated that the couple reconciled during the holidays, between Thanksgiving and Christmas, and that he knows this because they brought the children to his home during Christmas. He stated that they did not eat Thanksgiving dinner together.

- 14) The Respondent submitted seven (7) photographs taken within the last week which show the area purportedly occupied by ----- downstairs from the Respondent during the separation. The pictures depict a much cluttered room, with clothing strewn about, and other items including lumber stacked about the room. Also included in the picture is a green tank, which purportedly is a propane tank, used for heating the room. The pictures show a mattress in a section of the room with clothing laid upon it. The Respondent contends the pictures, although taken recently, show the room as it was when her husband stayed there. She stated that nothing has been changed.
- 15) West Virginia Income Maintenance Manual Chapter 9.1, A, (D-2) provides the following information regarding individuals who must be included in the same SNAP Assistance Group (AG):

The SNAP AG must include all eligible individuals who both live together and purchase and prepare their meals together...

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.

- 16) West Virginia Income Maintenance Manual Chapter 20.2 states that when an Assistance Group 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 entitlement the Assistance Group received and the entitlement the Assistance Group should have received [emphasis added].
- 17) West Virginia Income Maintenance Manual Chapter 20.2, C states that there are two types of Unintentional Program Violations- client errors and Agency errors. A UPV is established when:
  - An error by the Department resulted in the over issuance.
  - An unintentional error made by the client resulted in the over issuance.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy states that individuals who both live together and purchase and prepare more than fifty percent (50%) of their meals together must be included in the same assistance group. Spouses

who live together must be included in the same assistance group regardless of whether they purchase and prepare their meals together.

- 2) The totality of the evidence provided is not sufficient to support that ----- lived in the Respondent's home during the months of October and November 2010. The father-in-law's testimony is found to be credible, and supports the Respondent's and her husband's testimony that he lived in the same apartment building but in a different apartment during the timeframe in question. The Movant supplied no witness testimony or written statements from neighbors in support of the couple living together during the period in question. The Movant's circumstantial evidence is not sufficient to refute the witness testimony in this matter.
- 3) Therefore, the Movant's proposal to establish and seek collection of a repayment claim in the amount of one thousand five hundred eighty-six dollars (\$1586.00) is not correct.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Movant's proposal to establish and seek collection of a SNAP repayment claim in the amount of one thousand five hundred eighty-six dollars (\$1586.00).

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's [Respondent's] Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 17<sup>h</sup> Day of May, 2011.**

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**Cheryl Henson  
State Hearing Officer**