



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

March 19, 2012

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

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your son -----'s hearing held March 7, 2012. His hearing request was based on the Department of Health and Human Resources' proposal to establish a SNAP and a WV WORKS repayment claim against him.

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 and the LIEAP programs are based on current policy and regulations. These regulations provide that 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. (West Virginia Income Maintenance Manual §20.2.) They also provide that it is the responsibility of the applicant to list all individuals who are living in the home, regardless of whether or not they are family members or whether or not they share the cost of home heating. For the purpose of LIEAP eligibility, all household members are considered one AG. (West Virginia Income Maintenance Manual §26.2.A.1)

The information submitted at this hearing revealed that from November 2010 to February 2011, -----was overpaid SNAP and LIEAP benefits due to his failure to report his correct household composition. As such, he is required by policy to repay the SNAP benefits in the amount of \$835 and LIEAP benefits in the amount of \$335.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to establish a repayment claim against -----'s SNAP and LIEAP benefits.

Sincerely,

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

cc: Erika Young, Chairman, Board of Review
Trish Kerbawy, Repayment Investigations Supervisor

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

-----,

Respondent,

v.

**ACTION NO: 11-BOR-2425 (LIEAP)
11-BOR-2565 (SNAP)**

**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 March 19, 2012 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 at the ██████ County Office of the WV Department of Health and Human Resources (DHHR) in ██████ WV, with Department's Representative and Witness appearing by telephone conference call, on March 7, 2012, on a timely appeal filed November 28, 2011. This hearing was originally scheduled for January 24, 2012, but was rescheduled at Claimant's request.

II. PROGRAM PURPOSE:

The goal of the Low Income Energy Assistance Program (LIEAP) is to provide financial assistance to eligible households that are affected by rising costs of home heating which are excessive in relation to household income. It is not the purpose of this program to meet the entire cost of home heating during the winter season. Instead, the program is designed to partially offset the continuing rise in costs of home heating.

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's Witness

Trish Kerbawy, Repayment Investigation Supervisor, Department's Representative

Danita Bragg, Department's Witness

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

All participants were placed under oath at the beginning of the hearing.

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 LIEAP and SNAP benefits is correct.

V. APPLICABLE POLICY:

WV Income Maintenance Manual §2.2, §20.2 and §26.2.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Movant's Exhibits:

M-1 ES-FS-5 Food Stamp (SNAP) Claim Determination form

M-2 SNAP Allotment Determination screen print from RAPIDS, for September 2010 to March 2011

M-3 SNAP Issuance History screen print from RAPIDS, for December 2009 to December 2011

M-4 WV Income Maintenance Manual Chapter 1, section 2.E

M-5 WV Income Maintenance Manual Chapter 9, section 1

M-6 WV Income Maintenance Manual Chapter 20, section 2

M-7 WV Income Maintenance Manual Chapter 26, section 2.A

M-8 Address Detail for LIEAP Payment to American Electric Power on behalf of Respondent, dated November 4, 2010 and letter of approval for LIEAP dated September 11, 2010

M-9 Print-out of case comments from Respondent's case record, dated September 15, 2010

M-10 Telephone review mail-in form, dated August 23, 2010

Respondent's Exhibits:

C-1 Handwritten calendar showing Respondent's former roommate began job training on October 8, 2010

C-2 Paycheck Stubs showing Respondent's former roommate began working October 8, 2010

VII. FINDINGS OF FACT:

- 1) Respondent was informed by a letter dated November 7, 2011, that a LIEAP and a SNAP repayment claim had been established against him. He requested a fair hearing to protest the establishment of these repayment claims on November 28, 2011.
- 2) Department's Representative stated that a repayment claim was entered in Respondent's SNAP and LIEAP benefits because he failed to report his correct household composition during a SNAP telephone review conducted on August 31, 2010. She stated he submitted a review data confirmation form, signed and dated on September 2, 2010. (Exhibit M-10.) On this form and in the telephone review, Respondent reported that his household consisted of himself and a roommate. Department's Representative stated an Investigations and Fraud Management investigation found that in August 2010, the roommate had moved out of Respondent's home, and Respondent's mother, his representative for the hearing, had moved into the home.
- 3) Respondent's Representative, his mother, stated that she moved into his home in August, 2010, and his roommate moved out in October 2010. She added that she was not sure of the exact date she moved into her son's home, but that "it was sometime after the middle of the month." Neither Respondent's Representative or his witness, the roommate, knew the exact date the roommate moved out of the home, but they agreed that it was on or about October 12, 2010. She argued that her son had ten days to report that his roommate moved out of his home, and the worker had thirteen days to take action on this information. This would have gone beyond the adverse action deadline, the last date in the month of October for an Economic Services Worker to make changes to a case that would take effect in the following month. Therefore, she argued, her son's repayment claim should not have included the months of October and November 2010. Respondent's Representative stated she did not dispute that Claimant's SNAP benefits were incorrect for December 2010 to March 2011 due to an incorrect report of household composition.
- 4) Department's Representative stated that Respondent performed a telephone review on August 31, 2010, and signed and submitted a form confirming all of the information on the August 31 telephone review on September 2, 2010. (Exhibit M-10.) She argued that Respondent had the obligation at that time to report his correct household circumstances. She added that because he did not do this, the worker who processed his telephone review was not able to determine who in the household paid shelter and utility expenses, or whether or not Respondent and his mother purchased and prepared their meals together.
- 5) Department's representative stated that for the purposes of the LIEAP repayment, Respondent's application was approved based on heat-source utility account information and household composition and income information from his DHHR case record. She submitted into evidence LIEAP payment confirmation screens indicating that Respondent received LIEAP in the amount of \$235 on November 4, 2010 and Emergency LIEAP in the amount of \$100 on February 8, 2011. (Exhibit M-8.) She stated that because Respondent's mother was not included in the household composition, her income was not

included in the LIEAP eligibility calculations. She added that policy dictates all income from all household members is calculated to determine LIEAP eligibility.

6) Department's representative submitted into evidence a Food Stamp [SNAP] Claim Determination form (Exhibit M-1) indicating that for the repayment period of October 2010 to March 2011, Respondent received \$283 in SNAP per month. If his roommate were removed from his SNAP AG for those months, he would have received \$116 in SNAP per month. The form shows that the monthly overpayment was \$167 per month for six months, or \$1002.

7) West Virginia Income Maintenance Manual, Chapter 20.2 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.

8) West Virginia Income Maintenance Manual, Chapter 26.2.A.1 states in pertinent part:

It is the responsibility of the [LIEAP] applicant to list all individuals who are living in the home, regardless of whether or not they are family members or whether or not they share the cost of home heating. For the purpose of LIEAP eligibility, all household members are considered one AG.

9) West Virginia Income Maintenance Manual, Chapter 2.2.A.1 states in pertinent part:

When [a] reported change results in a decrease in benefits, the change is effective the following month, if there is time to issue advance notice. If not, the change is effective 2 months after it occurs. No [repayment] claim is established unless the client failed to report in a timely manner and this is the only reason the change could not be made within 13 days.

VIII. CONCLUSIONS OF LAW:

- 1) The Investigations and Fraud Management unit of the WV DHHR established a repayment claim against Respondent's SNAP benefits for the months of October 2010 through March 2011 in the amount of \$1002, \$167 per month for six months.
- 2) Department's Representative and Respondent's Representative agreed that Respondent was overpaid SNAP benefits for the months of December 2010 through March 2011.

- 3) Respondent's Representative disputed Department's intention to seek repayment for the months of October and November 2010. She testified that she moved into Respondent's home in August 2010 and Respondent's roommate moved out sometime in mid-October 2010; however, neither she nor the roommate knew the exact date that he moved.
- 4) The Department did not submit any evidence to support its contention that Respondent's roommate moved out of Respondent's home in August 2010.
- 5) Because Respondent never reported that his roommate moved out of his home, the SNAP benefits were incorrect for November 2010. Therefore the Department was correct to establish a repayment claim against Respondent's SNAP benefits for the months of November 2010 through March 2011, in the amount of \$835.
- 6) Because Respondent did not report that his mother lived in his home, her income was not included in calculations to determine his eligibility for a LIEAP application in October 2010 and an Emergency LIEAP application in February 2011. He was approved in the amounts of \$235 and \$100 respectively for these applications.
- 7) The Department acted correctly to establish a repayment claim in the amount of \$335 against Respondent in the LIEAP program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to establish repayment claims against Respondent for \$835 SNAP and \$335 in LIEAP.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Respondent's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th day of March 2012.

**Stephen M. Baisden
State Hearing Officer**