



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

July 12, 2023

[REDACTED]

Re: [REDACTED] v WV DHHR
ACTION NO.: 23-BOR-1825, 23-BOR-1826

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Lisa Snodgrass, Investigations and Fraud Management
Christina Saunders, Investigations and Fraud Management

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

IN THE MATTER OF:

**ACTION NO.: 23-BOR-1825 (SNAP)
23-BOR-1826 (SCA)**

██████████,

Appellant,

v.

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

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on June 29, 2023, on an appeal filed May 30, 2023.

The matter before the Hearing Officer arises from the May 17, 2023 determination by the Respondent to establish repayment claims of Supplemental Nutrition Assistance Program (SNAP) and School Clothing Allowance (SCA) benefits.

At the hearing, the Respondent appeared by Christina Saunders, Repayment Investigator Supervisor. The Appellant was present and was represented by his son, ██████████.

All witnesses were sworn in, and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV DHHR People's Access to Help (PATH) SNAP Application, dated February 26, 2022
- D-2 WV DHHR PATH eligibility system printout of Case Comments, dated March 08, 2022 through April 15, 2022
- D-3 Electronic Mail (Email) correspondence dated March 27, 2023 through March 29, 2023
- D-4 Email correspondence dated April 26, 2023 through April 27, 2023
- D-5 West Virginia Income Maintenance Manual (WVIMM) §§ 15.2.3.K through 15.7.5.B.2

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant was a recipient of SNAP benefits for an Assistance Group (AG) of four (4), from March 2022 through April 2023. (Exhibits D-1 through D-4)
- 2) On February 26, 2022, at the time of application, the Appellant reported that he and his family, were not United States (U.S.) citizens. (Exhibit D-1)
- 3) The Appellant signed a Rights and Responsibilities (R&R) form on February 26, 2022, acknowledging the understanding that he was responsible for the repayment of SNAP and School Clothing Allowance (SCA) benefits issued in error, whether due to his own error or that of the agency. (Exhibit D-1)
- 4) The Appellant's son, [REDACTED], a minor, was included in the Appellant's household AG of four (4). (Exhibit D-1)
- 5) In July 2022, the Appellant received SCA benefits in the amount of \$200 for child, [REDACTED] (Exhibit D-2)
- 6) On an unknown date, the Respondent initiated a repayment investigation. As a result of the investigation, the Respondent established two (2) SNAP repayment claims and one (1) SCA repayment claim against the Appellant for benefits received in error due to citizenship/alienage/residency and the failure to reside in the U.S. for a period of five (5) years since the date of entry.. (Exhibits D-2 through D-4)
- 7) On May 17, 2023, the Respondent issued a notice advising the Appellant that an agency error repayment claim of \$200 had been initiated for SCA benefits received in error in July 2022 for the Appellant's son, [REDACTED] due to citizenship/alienage/residency and a failure to reside in the U.S. for a period of five (5) years since the date of entry.
- 8) Subsequent the May 17, 2023 SCA notice, two (2) additional notices were mailed which indicated that because of an agency error, the Appellant received SNAP benefits he was not entitled to receive totaling \$1,999 during the months of March 2022 through April 2022, and \$11,698 during the months of May 2022 through April 2023, due to citizenship/alienage/residency and a failure to reside in the U.S. for a period of five (5) years since the date of entry.
- 9) The Appellant's U.S. entry date was December 19, 2021, with a status expiration date of December 19, 2031. (Exhibits D-1 through D-4)
- 10) Individuals who have not lived in the U.S. for a period of five (5) years since entry are defined as ineligible non-citizens for SNAP/SCA benefit purposes.

11) The Appellant contested the establishment of the SNAP and SCA repayment claims.

APPLICABLE POLICY

Code of Federal Regulations, 7 CFR 273.4(a)(6)(iii), provides, in part:

(a) Household members meeting citizenship or alien status requirements. No person is eligible to participate in the Program unless that person is:

(6) An individual who is both a qualified alien as defined in paragraph (a)(6)(i) of this section and an eligible alien as defined in paragraph (a)(6)(ii) or (a)(6)(iii) of this section.

(iii) The following qualified aliens, as defined in paragraph (a)(6)(i) of this section, must be in a qualified status for 5 years before being eligible to receive SNAP benefits. The 5 years in qualified status may be either consecutive or nonconsecutive. Temporary absences of less than 6 months from the United States with no intention of abandoning U.S. residency do not terminate or interrupt the individual's period of U.S. residency. If the resident is absent for more than 6 months, the agency shall presume that U.S. residency was interrupted unless the alien presents evidence of his or her intent to resume U.S. residency. In determining whether an alien with an interrupted period of U.S. residency has resided in the United States for 5 years, the agency shall consider all months of residency in the United States, including any months of residency before the interruption.

7 CFR § 273.18 provides, in part:

A recipient claim is an amount owed due to benefits that are overpaid. Each person who has an adult member in the household when the overpayment was made is responsible for repaying a claim.

There are three types of claims:

An . . .	is . . .
(1) Intentional Program violation (IPV) claim	any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.
(2) Inadvertent household error (IHE) claim	any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) Agency error (AE) claim	any claim for an overpayment caused by an action or failure to take action by the State agency.
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7 CFR 273.18(a) (a) provides, in part:

- (1) A recipient claim is an amount owed because of:
 - (i) Benefits that are overpaid or
 - (ii) Benefits that are trafficked. Trafficking is defined in 7 CFR 271.2.

7 CFR 273.18(e)(4) provides, in part:

- (4) Repayment agreements.
 - (i) Any repayment agreement for any claim must contain due dates or time frames for the periodic submission of payments.
 - (ii) The agreement must specify that the household will be subject to involuntary collection action(s) if payment is not received by the due date and the claim becomes delinquent.

West Virginia Income Maintenance Manual (WVIMM) § 2.3 provides, in part:

To be eligible to receive Supplemental Nutrition Assistance Program (SNAP) benefits, WV WORKS, Medicaid, or WVCHIP the individual must be a resident of the United States, as a citizen or in a qualifying non-citizen status.

WVIMM § 11.2 provides, in part:

When an assistance group (AG) has been issued more Supplemental Nutrition Assistance Program (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.

WVIMM § 11.2.3.A provides, in part:

There are two types of UPVs – client error (CE) and agency errors (AE). A CE claim may be established when it is determined that the over-issuance was a result of an unintentional error made by the client. An AE claim may be established when it is determined that the over-issuance was a result of an error made by the Department.

WVIMM § 11.2.5 provides, in part:

Collection action is initiated against the AG that received the overissuance. When the AG composition changes, collection is pursued against any and all AGs that include a liable debtor.

The following persons are equally liable for the total amount of the overpayment and are liable debtors:

- Adult or emancipated minors in the AG
- Disqualified individuals who would otherwise be required to be included
- An unreported adult who would have been required to be in the AG had he been reported
- Sponsors of noncitizen AGs when the sponsor is responsible for the overpayment
- An authorized representative of an AG if he is responsible for the overpayment

For AGs containing a liable debtor that are certified at the time the claim is established, collection activity may begin by recoupment, after the notice period expires. Recoupment by benefit allotment reduction is mandatory for all claims when a liable debtor is certified for SNAP. The eligibility system automatically begins recoupment and posts these payments to the claim.

WVIMM § 11.2.5.B.1 provides, in part:

The AG is notified of the SNAP claim by computer-generated notification/demand payment letters from the eligibility system. Enclosed with the letter is a repayment agreement, form ES-REPAY-1, and a postage-paid envelope.

WVIMM § 11.3 provides, in part:

Repayment is pursued for cash assistance overpayments made under the former Aid to Families with Dependent Children/Unemployed Parent (AFDC/U) Program, WV WORKS, Child Support Incentive (CSI), Temporary Assistance for Needy Families (TANF) Program, WV WORKS Support Service Payments, WV WORKS School Clothing Allowance, and the West Virginia School Clothing Allowance.

When an assistance group (AG) has received more cash assistance than it was entitled to receive, corrective action is taken by establishing a claim for the overpayment. The claim is the difference between the amount of benefits received and the amount of benefits to which the AG was entitled.

The following persons are equally liable for the total amount of overpayment and are liable debtors:

- Adult or emancipated minors in the AG
- Disqualified individuals who would otherwise be required to be included
- Caretaker relatives who signed the application/redetermination at the time

- of overpayment
- An unreported adult who would have been required to be in the AG had he been reported
- Sponsors of noncitizen AGs when the sponsor is responsible for the overpayment When the AG composition changes, collection is pursued against any and all AGs that include a liable debtor.

WVIMM § 11.3.5.B.2 provides, in part:

The AG is notified of the cash assistance claim by computer-generated notification/demand payment letters from the eligibility system. Enclosed with the letter is a repayment agreement, form ES-REPAY-1, and a postage-paid envelope.

WVIMM § 15.7 provides, in part:

To be eligible for WV WORKS, Medicaid, the West Virginia Children's Health Insurance Program (WVCHIP), or the Supplemental Nutrition Assistance Program (SNAP), an individual applying must be a resident of the United States (U.S.) as a citizen or a legal noncitizen and meet eligibility requirements for each program. Among those ineligible are noncitizen visitors, tourists, diplomats, and students who enter the U.S. temporarily with no intention of abandoning their residence in a foreign country. A non-qualified noncitizen or ineligible noncitizen residing in the U.S. who requires emergency medical care may qualify for Medicaid for the length of time medically required to avert the medical emergency.

WVIMM § 15.7.1 provides, in part:

A person must be a U.S. citizen, a national of the U.S., or a qualified noncitizen to qualify.

WVIMM § 15.7.1.A provides, in part:

A qualified noncitizen for SNAP benefits is in one of the following categories, as determined by the United States Citizenship and Immigration Services (USCIS) of the U.S. Department of Homeland Security:

- An individual lawfully admitted for permanent residence (LPR) in the U.S. who has a Permanent Resident Card and has been in the U.S. for five years with this status.
- Qualified noncitizen children under 18 are eligible without a waiting period regardless of when they entered the U.S. Continued eligibility will be reviewed once the noncitizen reaches the age of 18;
- An individual who has lived in the U.S. as a qualified noncitizen for five years from the date on entry;

WVIMM § 15.7.5.B.1 provides, in part:

A qualified noncitizen is:

A noncitizen who is lawfully admitted to the U.S. for permanent residence (LPR) under the INA and was admitted before August 22, 1996.

Qualified noncitizens subject to a five-year waiting period:

A noncitizen who is lawfully admitted to the U.S. for permanent residence (LPR) on or after August 22, 1996, and has been a qualified noncitizen for more than five years.

WVIMM § 15.6.A provides, in part:

Any noncitizen who is not an eligible qualified noncitizen can be considered for Medicaid emergency service.

WVIMM § 19.2.1 provides, in part:

The application process for WV WORKS School Clothing Allowance (SCA) is the same as for WV WORKS applicants, with special considerations.

DISCUSSION

The Supplemental Nutrition Assistance Program is governed by the U.S. Department of Agriculture Food Nutrition Services (USDA FNS). The USDA FNS determines the guidelines for States to use for budgeting purposes, including, but not limited to, allowable deduction amounts and maximum SNAP issuance amounts. Pursuant to policy, repayment claims are established for any assistance group that received more SNAP and/or School Clothing Allowance (SCA) benefits than which it was entitled to receive. These claims are the difference between the SNAP entitlement of the assistance group and the SNAP allotment the assistance group was entitled to receive. Repayment claims are established regardless of whether the overissuance of benefit was the result of an agency error or a client error [emphasis added].

On February 26, 2022, an application for SNAP benefits was submitted electronically by the Appellant using the WV PATH public portal. At the time of application, the Appellant reported that he and his family, were not United States (U.S.) citizens. The Appellant signed the Rights and Responsibilities (R&R) form acknowledging the understanding that he was responsible for the repayment of over-issued SNAP and School Clothing Allowance (SCA) benefits, whether due to his own error or that of the agency. The Appellant's application was approved and the Appellant began receiving SNAP benefits for an Assistance Group (AG) of four (4) in March 2022 through April 2023.

On an unknown date, the Respondent received a referral for the issuance of SNAP and SCA benefits received in error due to citizenship/alienage/residency status. As a result of the investigation, the Respondent established two (2) SNAP repayment claims and one (1) SCA repayment claim against the Appellant. On May 17, 2023, the Respondent issued a notice advising the Appellant that an agency error repayment claim of \$200 had been initiated for SCA benefits received in error in July 2022, due to citizenship/alienage/residency status requirements and the failure to reside in the U.S. for a period of five (5) years since the date of entry. Subsequent the

May 17, 2023 notice, two (2) additional notices were issued advising the Appellant that agency error SNAP repayment claims had been established due to the over-issuance of \$1,999 in SNAP benefits from March 2022 through April 2022, and \$11,698 in SNAP benefits from May 2022 through April 2023, due to citizenship/alienage/residency status requirements and the failure to reside in the U.S. for a period of five (5) years since the date of entry.

(SNAP Repayment)

The Respondent bears the burden of proof and has to demonstrate by a preponderance of the evidence that it correctly followed policy when establishing repayment claim(s) against the Appellant. The Appellant argued that he reported the AG's immigrant status as required, and that the Department erred by not acting upon the information he provided at the time of his application. The Appellant further argued that because the Department caused the error, he should not be responsible for repayment of the over-issuance. However, on February 26, 2022, at the time of application, the Appellant signed the R&R form acknowledging the understanding that he was responsible for the repayment of over-issued SNAP/SCA benefits whether due to his own error or that of the agency.

The West Virginia Income Maintenance Manual explains that when an AG has been issued more SNAP than it was entitled to receive, corrective action must be taken by establishing a repayment claim. Once the Respondent determined the Appellant received SNAP benefits that he was not entitled to receive, the Respondent acted in accordance with policy and established a benefit recovery referral for SNAP benefits issued in error to the Appellant in the amount of \$1,999 from March 2022 through April 2022, and in the amount of \$11,698 from May 2022 through April 2023.

(SCA Repayment)

An additional repayment claim of \$200 was initiated for SCA benefits received in error in July 2022 for the Appellant's child, [REDACTED], due to citizenship/alienage/residency status and the failure to reside in the U.S. for a period of five (5) years since the date of entry. The Respondent has to demonstrate by a preponderance of the evidence that it correctly followed policy when establishing a repayment claim against the Appellant for SCA benefits received in error.

Pursuant to policy, in order to be eligible for the SCA program, the application process is the same as for WV WORKS applicants, with special considerations. In order to be eligible for WV WORKS, the individual applying must be a resident of the U.S. as a citizen or a legal noncitizen, and meet eligibility requirements for each program. Qualified noncitizens are subject to a five-year waiting period. Because the Appellant has not met the five-year U.S. residency waiting period, the Respondent was correct in its decision to establish an agency error repayment claim for SCA benefits received in error July 2022.

CONCLUSIONS OF LAW

- 1) The Appellant's AG members are defined as non-citizens who have resided in the U.S. for fewer than five (5) years.
- 2) To be eligible for SNAP and SCA benefits, the Appellant must be a U.S. citizen, U.S.

national, or a qualified noncitizen.

- 3) Per policy, when an AG receives more SNAP and SCA benefits than it is entitled to receive, a repayment claim is established.
- 4) Because the Appellant's AG received SNAP and SCA benefits to which they were not entitled to receive from March 2022 through April 2023, the Respondent was correct in initiating two (2) agency error SNAP repayment claims in the amount(s) of \$1,999 and \$11,698, and one (1) SCA repayment claims in the amount of \$200.
- 5) Because the over-issuance of SNAP and SCA benefits occurred due to an error on the part of the agency, it is defined as an agency error.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to establish two (2) agency error SNAP repayment claims beginning March 2022 through April 2023, and one (1) agency error SCA repayment claim for July 2022 against the Appellant.

ENTERED this 12th day of July 2023.

Angela D. Signore
State Hearing Officer