



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
200 Davis Street
Princeton, WV 24740

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 8, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 25, 2006. Your hearing request was based on the Department of Health and Human Resources' decision to establish a Client Error Food Stamp and WV Works Cash Assistance claim against your household.

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 Food Stamp program and WV Works Cash Assistance is based on current policy and regulations. Some of these regulations state as follows: When a client fails to report changes timely and the change would have decreased benefits, a claim is established. When the client fails to provide accurate or complete information, the first month of the overpayment is the month the incorrect, incomplete or unreported information would have affected the benefit level. (WV Income Maintenance Manual Section 20.3C)

The information, which was submitted at your hearing, revealed that you failed to report changes in your income timely, which resulted in your household being over issued food stamps and cash assistance in the month of March 2005.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to establish and collect the Client Error Food Stamp claim of \$400.00, and WV Works Cash Assistance claim of \$420.00.

Sincerely,

Cheryl McKinney
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Brian Shreve, [REDACTED] DHHR

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

_____,
Claimant,

v.

Action Number: 06-BOR-3071

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 6, 2006 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 on October 25, 2006 on a timely appeal, filed verbally on June 3, 2006. Although the verbal filing date listed on the IG-BR-29 is listed as September 21, 2006, evidence clearly shows claimant contacted the Agency and was appealing the decision as early as June 3, 2006.

II. PROGRAM PURPOSE:

The Program entitled Food Stamps is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The purpose of the Food Stamp 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.

The Program entitled West Virginia Works is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

WV Works was created by Senate Bill 140, Article 9 of the West Virginia Code and the Temporary Assistance to needy Families Block Grant, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The purpose of WV Works is to provide assistance to needy families with children so they can be cared for in their own home, reduce dependency by promoting job preparation, work and marriage. The goals of WV Works are to achieve more efficient and effective use of public assistance funds, reduce dependence on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

_____, Claimant
Brian Shreve, DHHR Repayment Investigator

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

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in their actions to establish and collect an overpayment of Food Stamps and WVW Cash assistance.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 2.2C,2, 20.2, 20.3C, and 2.17B2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Affidavit of Direct Payments dated 10-27-05
- D-2 Copy of DHS-1 dated January 23, 2006
- D-3 Copy of Case Comments dated 2-16-05
- D-4 Copy of Rapids Screen "RTDT" for the month of March, 2005
- D-5 Copy of Claims Determination forms for Cash Assistance and Food Stamps (12 pages)
- D-6 Copy of WV Income Maintenance Manual Section 20.2
- D-7 Copy of Notification letter dated 5-16-06

***Department introduced the following documents and labeled them DR (Department's Rebuttal)

- DR-1 Copy of letter to _____ dated May 15, 2006
- DR-2 Copy of EBT screen showing cash assistance payment made 3-05 (2 pages)
- DR-3 Copy of Notification letter dated 5-11-06
- DR-4 Copy of WV Income Maintenance Manual Section 20.3

Claimant's Exhibits:

- C-1 Copy of Notification letter dated 6-3-06 from Child Advocate
- C-2 Copy of Rapids screens showing cash assistance payment made 3-1-05 (2 pages)
- C-3 Copy of EBT screens showing cash assistance information

VII. FINDINGS OF FACT:

- 1) The claimant received both Food Stamps and WV Works Cash Assistance during the month of March, 2005. (D-5) On February 16, 2005 claimant contacted the Department and reported that she had received spousal support of \$600.00 in the month of 2-05, and expected to begin receiving both spousal support of \$600.00 monthly and \$500.00 monthly child support beginning in March, 2005. (D-3) Due to policy deadlines, the Department entered the spousal support and child support income to the cases effective April, 2005.
- 2) On October 27, 2005 claimant signed a notarized form in the Child Advocate Office indicating she actually began receiving \$1130.00 monthly in January 2005 as a direct payment from a non-custodial parent. She indicated on this form the \$1130.00 was received from January 2005 through July 2005, with a final payment of \$200.00 paid in August 2005. (D-1)
- 3) The Department's Repayment Investigator reviewed claimant's case file and found that claimant did not report this information timely, as she actually began receiving \$1130 monthly in January 2005. The Repayment Investigator determined that since the information should have been reported in January 2005, the income should have been counted in determining eligibility for March 2005 Food Stamps and WV Works Cash Assistance. The Department established a Food Stamp claim for \$400.00 and a Cash Claim for \$420.00 for March 2005. (D-5)
- 4) The claimant was notified of the overpayment of Food Stamps on May 16, 2006 (D-7) and on May 11, 2006 for the Cash Assistance overpayment. (DR-3)
- 5) The claimant testified that she contacted the Department immediately after receiving a letter from the Child Advocate Office dated June 3, 2006. She stated this is when she began to question the Department's action to establish overpayment claims of both Food Stamps and WV Works for the month of March 2005. After weeks of discussions with different employees of the Department she determined that only a Fair Hearing would resolve the issue. The claimant testified that she must have made a mistake on the form she completed on October 27, 2005. She stated she knows she did not receive the income in question during a month she also received Food Stamps and WV Works. The claimant testified that she could produce cancelled checks to prove when she actually received this money.
- 6) The claimant was allowed until November 6, 2006 to provide additional evidence to support her claim that she made a mistake when entering information on the "Affidavit

of Direct Payments” form she signed October 27, 2006. The Department did not object to this action.

- 7) The claimant failed to provide any additional evidence by the date of November 6, 2006 therefore the hearing was concluded with no other evidence to be considered.
- 8) WV Income Maintenance Manual Section 2.17,B.2 states in relevant part:

REPORTING REQUIREMENTS

1. What Must Be Reported

All changes in income, assets, household composition and other circumstances must be reported.

2. Timely Reporting

For WV Works case, all changes in a client’s circumstances must be reported immediately. In addition, new earned income must be reported within 10 days of the date new employment begins to avoid certain penalties.

- 9) WV Income Maintenance Manual Section 2.2.C,2 states in relevant part:

Decrease in Benefits

When the 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 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.

- 10) WV Income Maintenance Manual Section 20.2 states in relevant part:

Collection action is initiated against the assistance group which received the over issuance. A claim is established when: An unintentional error made by the client or the agency results in the over issuance.

Collections may be made on only one claim at a time. Claims are collected in the following priority order:

- Intentional Program Violation
- Unintentional Program Violation, Client error
- Unintentional Program Violation, Agency error

- 11) WV Income maintenance Manual Section 20.3C states in relevant part:

IDENTIFYING THE MONTH(S) FOR WHICH CLAIMS ARE ESTABLISHED

When a client fails to report changes timely according to Section 2.17,B, and the change would have decreased benefits, a claim is established.

Note: Claims are NOT established for excess benefits received solely because of the 13-day advance notice period.

Items 1 and 2 below are used when the overpayment is not contested in a Fair Hearing. If a Fair Hearing is held, the Hearing Officer's decision is final.

2. Client Errors

When the client fails to provide accurate or complete information, the first month of the overpayment is the month the incorrect, incomplete or unreported information would have affected the benefit level, considering reporting and noticing requirements.

VIII. CONCLUSIONS OF LAW:

- 1) Evidence provided during the hearing clearly shows the claimant began receiving spousal and child support of \$1130.00 in January, 2005, and did not report the receipt of the income to the Department until February 16, 2005. Although the claimant testified she may have made a mistake when she completed the notarized "Affidavit of Direct Payments" form indicating the timeframe for receipt of this income, she failed to provide any documentation to support this claim.
- 2) Policy is clear in that the claimant was required to report changes in income immediately. Evidence shows she did not report this change timely.
- 3) Policy clearly shows the Department is required to establish claims on overpayments that were not reported timely. The Department was correct in their decision to establish a Food Stamp and WV Works claim for the month of March, 2005.

IX. DECISION:

I find that the claimant's household was over issued WV Works Cash Assistance and Food Stamp benefits for the month of March 2005 due to client error. I rule to **uphold** the Department in its actions to establish a WV Works Cash Assistance and Food Stamp claim and to collect the overpayment from the claimant's assistance group.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of November 2006.

**Cheryl McKinney
State Hearing Officer**