



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

November 7, 2011

-----and -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 3, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to establish a Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, 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 SNAP is based on current policy and regulations. Some of these regulations state that when an assistance group has been issued more Food Stamp (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 Department or the household, are subject to repayment. (West Virginia Income Maintenance Manual, Chapter 20.2 and 7 CFR § 273.18 - Code of Federal Regulations).

Information submitted at the hearing reveals that -----and ----- should have been included in the same SNAP assistance group. As a result, the-----household was over issued \$4,930 in SNAP benefits during the period of January 2009 through December 2010.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to establish and seek collection of a SNAP (Food Stamp) repayment claim in the amount of \$4,930 for the period of January 2009 through December 2010.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
Samantha Close, RI, DHHR

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

-----AND -----

Claimants,

v.

Action Number: 11-BOR-1963

**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 for -----and ----- . 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 November 3, 2011 on a timely appeal filed September 20, 2011.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (SNAP), formerly 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.

III. PARTICIPANTS:

-----, Claimant
Samantha Close, Repayment Investigator (RI), WVDHHR

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Agency is correct in its proposal to establish and seek repayment of a SNAP (Food Stamp) claim.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 9.1, and 20.2.
7 CFR § 273.18 - Code of Federal Regulations.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHHR-1 Hearing/Grievance Request Notification (IG-BR-29)
- DHHR-2 SNAP overpayment calculations (by month) for 1/1/09 through 12/31/10
- DHHR-3 SNAP Issuance History (-----) for period 1/09 through 12/10
- DHHR-4 SNAP Issuance History (-----) for period 1/09 through 12/10
- DHHR-5 RAPIDS Case Comments (-----), 12/2/10 through 5/19/11
RAPIDS Case Comments (-----), 11/10/10 through 4/1/11
- DHHR-6 Rights and Responsibilities (DFA-RR-1) signed by ----- on 12/16/10
- DHHR-7 West Virginia Income Maintenance Manual, Chapter 9.1
- DHHR-8 West Virginia Income Maintenance Manual, Chapter 1.2
- DHHR-9 West Virginia Income Maintenance Manual, Chapter 20
- DHHR-10 Food Stamp Claim Determination for period 1/09 through 12/10
- DHHR-11 Exterior of Claimants' residence (two photographs)

Claimant's Exhibits:

Claimant's-1 Three (3) photographs – (1) -----' residence, (2) Entrance to ----- residence and (3) 2 electric meters mounted together.

VII. FINDINGS OF FACT:

- 1) On or about August 10, 2011, the Claimants were notified of a Supplemental Nutrition Assistance Program (SNAP) over issuance. Two separate notices were sent [on the same day] to identify two different overpayment periods - The first notice indicates an overpayment occurred during the period 1/1/09 to 10/31/10 in the amount of \$4,496 and the second notice indicates that an overpayment occurred during the period 11/1/10 to 12/1/10 in the amount of \$434. The total amount of overpayment is \$4,930. The Department noted that because the Claimants failed to complete a timely eligibility review in October 2010, its computer system recognizes two different overpayment periods. The Department noted, however, that there was no disruption in monthly SNAP benefits.

- 2) The Department contended that the Claimants have reported they are residing in separate households (DHHR-5 and DHHR-6) – purchase and prepare their meals separately – and have consequently received SNAP benefits in a separate assistance group (AG) during the period for which repayment is proposed. The Department contends that pursuant to SNAP policy, -----and ----- are married, living in the same household, and are not eligible to receive SNAP benefits in separate assistance groups (AG). As a result, the Department contends that the Claimants were over issued SNAP benefit during the period January 2009 through December 2010 in the amount of \$4,930 (Exhibits DHHR-2, DHHR-3, DHHR-4 and DHHR-10).
- 3) ----- contended that he and his wife live in separate dwellings. He provided Exhibit Claimant’s-1 (3 photographs - a picture of the part of the home -----allegedly lives in, a door showing his separate entrance, and a picture of 2 electric meters) to show they live in separate residences.
- 4) The Department submitted DHHR-11, 2 photographs of the exterior of the Claimants’ residence. The top picture shows the front entrance to the upstairs of the log home where ----- currently resides, and when asked to explain how he enters his residence, ----- purported that he must go around the right side and enter through the basement. He went on to say that he must then pass through another entrance in the basement to enter his residence as it extends beyond her home. ----- reported that his residence is not visible in the pictures because it is underground and partially covered by dirt. ----- testified that he and his wife had papers to file for legal separation, but he does not know where those documents are located. He contends that his situation is no different than individuals who live above or below each other in an apartment setting.
- 5) Policy found in Chapter 9.1.A.1 of the West Virginia Income Maintenance Manual provides that the SNAP Assistance Group (AG) must include all eligible individuals who both live together and purchase and prepare their meals together.
- 6) West Virginia Income Maintenance Manual, Chapter 9.1.A.1.b.(2) states that individuals or groups of individuals living with others, but who customarily purchase food and prepare meals separately, are an AG. Customarily purchasing and preparing food separately means that, during the certification period, the client actually purchases and prepares his food separately from the others in the household over 50% of the time, except for an occasional shared meal. This occasional sharing of food does not interfere with his separate AG status. Policy goes on to state – 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 [Emphasis added].
- 7) West Virginia Income Maintenance Manual, Chapter 20.2:
When an AG (assistance group) has been issued more Food Stamps 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 20.2,C:
There are 2 types of UPV’s, client errors and agency errors.

A UPV claim is established when:

- An error by the Department resulted in the overissuance.
- An unintentional error made by the client resulted in the overissuance

VIII. CONCLUSIONS OF LAW:

- 1) Policy that governs SNAP provides that the SNAP Assistance group (AG) must include all eligible individuals who both live together and purchase and prepare their meals together. Policy goes on to state that married individuals who live together, even if they do not purchase and prepare meals together, must be included in the same AG.
- 2) Evidence submitted by the Claimant fails to demonstrate that he and his wife should be included in a separate SNAP assistance groups. While ----- contended that his residence is completely separate from -----' residence, he must enter and exit his alleged residence through the basement of her home. Exhibit DHHR-11 clearly demonstrates that -----and ----- are residing in the same home. In the absence of evidence to the contrary, the Claimants are married to each other under State law, and therefore must be included in the same AG.
- 3) Pursuant to policy found in Chapter 20 of the West Virginia Income Maintenance Manual, the Department has correctly proposed repayment of the over issued SNAP benefits. Policy makes no distinction between claims resulting from errors made by the Claimant or the Agency - The claim is the difference between the entitlement the assistance group received and the entitlement the assistance group should have received.
- 4) The Department's proposal to establish and seek collection of the repayment claim is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to establish and seek collection of a SNAP repayment claim in the amount of \$4,930 for the period of January 1, 2009 through December 31, 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of November, 2011.

**Thomas E. Arnett
State Hearing Officer**