



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

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

May 11, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 26, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to establish a Supplemental Nutrition Assistance Program (SNAP) repayment 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 Supplemental Nutrition Assistance Program (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 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 your hearing reveals that the Department correctly determined that your husband was living in your household during the period July 19, 2007 to December 31, 2007, resulting in an over-issuance of SNAP benefits in the amount of \$1575.

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 \$1575 for the period of July 19, 2007 to December 31, 2007.

Sincerely,

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

CC: Erika Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

Action Number: 10-BOR-593

-----,
Respondent,

v.

**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 May 11, 2011, 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 (DHHR.) This fair hearing was convened on April 26, 2011, on a timely appeal filed February 16, 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 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
-----, Respondent's Husband and Witness
-----, Respondent's Witness
-----, Respondent's Witness

Brian Shreve, Repayments Investigator, Department's Representative

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

This hearing was conducted at the WV Department of Health and Human Resources, [REDACTED] County Office in [REDACTED] WV.

The Hearings Officer placed all participants under oath at the beginning of the hearing.

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 repayment claim.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 10.4, Chapter 6.3 and Chapter 20.2.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- M-1 IFM-1, fraud referral form, dated February 29, 2008.
- M-2 Non-Refundable Representation Agreement from [REDACTED] Law Office, [REDACTED] WV, dated January 3, 2008.
- M-3 Property Settlement Agreement from Family Court of [REDACTED] County, dated February 5, 2008.
- M-4 Copy of letter from Repayment Investigator to Respondent, dated January 24, 2011.
- M-5 Print-out from benefits-issuance system showing SNAP issuance amounts from July 2007 through January 2009.
- M-6 ES-FS-5, Food Stamp Claim Determination – July 2007 through December 2007.
- M-7 Wage verification from the place of employment of Respondent's spouse, dated April 9, 2008.
- M-8 Copy of letter from Repayment Investigator to Respondent, dated January 31, 2011.
- M-9 Copy of Income Maintenance Manual Chapter 9.1.A.1.b(2) showing which household members must be included in the same SNAP assistance group.
- M-10 Copy of Income Maintenance Manual Chapter 20.2 showing SNAP overpayment claims and repayment procedures.
- M-11 Copy of letter from Repayments Investigator to Respondent dated January 11, 2011.

VII. FINDINGS OF FACT:

- 1) Department's Representative submitted verification in the form of a print-out from Respondent's SNAP case record to indicate that she began receiving SNAP benefits effective July 19, 2007. (Exhibit M-5.)
- 2) Department's Representative testified that he received an IFM-1, fraud referral form, from an eligibility worker at the WV DHHR, [REDACTED] County office. (Exhibit M-1.) On it, the worker reports a telephone call she received from Respondent's mother-in-law on February 29, 2008.

The section of the referral form labeled “Summary of Questionable Eligibility Factors” contains the following information:

Worker received call from [Respondent’s mother-in-law] who states that [Respondent] has lied to DHHR and has for a long time. [Mother-in-law] states her son, [Respondent’s spouse], lives in the home with [Respondent] and always has. She states [Respondent’s spouse] works in coal mines, they have income and not reported. States [Respondent’s spouse] found out about [Respondent] receiving benefits, and left her and she begged him to come back as she had case closed, but it appears she has reapplied and still active. [Mother-in-law] also states . . . son [Respondent’s spouse] works for Double-D Coal Company.

- 3) Department’s Representative testified that he contacted Respondent several times after she received the original claim letter. He stated that Respondent disagreed with the assertion that her spouse was living in her home. He stated that she submitted verification that they were in the process of divorcing. Department’s representative submitted verification that Respondent’s spouse had hired an attorney on January 3, 2008 to represent him in his divorce. (Exhibit M-2.) Department’s representative also provided verification that a property settlement had been reached as part of this divorce. He submitted a copy of a Property Settlement Agreement from the Family Court of ██████ County, dated February 5, 2008. (Exhibit M-3.) He testified that this was not sufficient information to verify Respondent’s spouse was out of the home, and he contacted Respondent to ask her to submit to him a copy of their Final Divorce Decree. He provided a copy of the letter he sent to Respondent to that effect. (Exhibit M-4.) He stated that Respondent contacted him by telephone to report that she and her spouse had reconciled and withdrew their divorce petitions. (Exhibit M-3, last page.)
- 4) Department’s Representative testified that the initial claim overpayment in Respondent’s SNAP case was in the amount of \$2627 for overpaid SNAP benefits from July 19, 2007 to April 30, 2008. He testified that he again contacted Respondent by mail (Exhibit M-8) to inform her he recalculated the overpayment claim based on the verification that Respondent was out of the home from January 2008 through April 2008, so those months would not be included in the claim. He testified that the removal of those months lowered the amount of the claim to \$1575.
- 5) West Virginia Income Maintenance Manual, Chapter 9.1.A.1(b) (Exhibit M-9) states in pertinent part:

Individuals or groups of individuals living with others, but who customarily purchase food and prepare meals separately are an [Assistance group or] 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 for food does not interfere with his separate AG status. EXCEPTION: 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.

. . .

- 6) West Virginia Income Maintenance Manual, Chapter 20.2 (Exhibit M-10) states in pertinent part:

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.

- 7) Respondent testified her spouse was out of the home from the time she initially applied for SNAP benefits in July 2007 until they reconciled and withdrew their divorce petitions in February 2008. She stated that her mother-in-law does not like her and has tried on several occasions to “cause trouble” between them. Respondent’s spouse testified that he lived with his mother for the months in question, but that she received notice from the DHHR that she would lose her SSI Medicaid with his income in the household, and that is why she called the local DHHR office to report that he lived with his wife.

VIII. CONCLUSION OF LAW:

- 1) A worker at the [REDACTED] County office of the WV DHHR received telephone call from an individual claiming to be Respondent’s mother-in-law. The caller indicated that Respondent, a SNAP recipient, failed to report that her spouse was living in Respondent’s home and was working in the coal mining industry. The caller indicated that Respondent had applied for benefits without her spouse’s knowledge, and when he found out about the application, he moved out of the home. Based on this information, Department’s Representative calculated an overpayment claim in the amount of \$2627, for SNAP overpayments from the time that Respondent had been approved for the benefits on July 19, 2007, until they ended on April 30, 2008.
- 2) Department’s Representative received verifications that Respondent and spouse had filed divorce petitions, that Respondent’s spouse had engaged an attorney to represent him in the divorce in January 2008, and that a property settlement agreement had been signed in February 2008. Department’s representative also received verification that before the final divorce decree could be signed by Respondent and spouse, they reconciled and withdrew their divorce petitions. Because of these verifications, Department’s Representative amended the overpayment claim to only include the period of time from July 19, 2007, to December 31, 2007, and to reduce the claim amount to \$1575.
- 3) The evidence and testimony of the Department and the Respondent are contradictory, with the Department presenting evidence to indicate Respondent’s spouse lived with her from July 2007 to December 2007, and the Respondent presenting evidence to indicate that she and her spouse were separated during that time. However, neither Respondent nor spouse provided verification that the spouse was out of the home before the divorce action was attempted in January 2008. This gives more credence to the Department’s assertion of the facts.
- 6) The Department’s proposal to establish and seek collection of a repayment claim is therefore 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 \$1575 for the period July 19, 2007 through December 31, 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Respondent's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 11th Day of May, 2011.

**Stephen M. Baisden
State Hearing Officer**