



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 4, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 28, 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 October 1, 2010 through January 31, 2011, resulting in an over-issuance of SNAP benefits in the amount of \$3067.

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 \$3067 for the period of October 1, 2010 to January 31, 2011.

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-687**

-----,  
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 4, 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 28, 2011, on a timely appeal filed March 2, 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

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] 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 Print-out of case comments made in Respondent's SNAP benefits case on August 10, 2010.
- M-2 Print-out from benefits-issuance system showing categories of Medicaid coverage for Respondent's daughter.
- M-3 Print-out from benefits-issuance system showing categories of Medicaid coverage for Respondent's daughter, page 2.
- M-4 Print-out of case comments made in Respondent's SNAP benefits case on August 10, 2010.
- M-5 Copy of letter from eligibility worker at WV DHHR, Logan District, to Respondent, dated August 11, 2010.
- M-6 Copy of letter from eligibility worker at WV DHHR, Logan District, to Respondent, dated September 24, 2010.
- M-7 Copy of written statement taken from Defendant's relative by worker in Criminal Investigations unit, dated December 15, 2010.
- M-8 Copy of request for hearing, dated February 18, 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 ES-FS-5, Food Stamp Claim Determination – October 2010 through January 2011.
- M-12 Copy of letter from Repayments Investigator to Respondent dated February 16, 2011.

##### **Respondent's Exhibits**

- R-1 Written statement dated January 16, 2011, indicating only Respondent and her four children live in her household.
- R-2 Written statement dated January 17, 2011, indicating only Respondent and her four children live in her household.
- R-3 Written statement dated January 18, 2011, indicating only Respondent and her four children live in her household.
- R-4 Undated written statement from individual indicating Respondent's spouse lives with him.

## VII. FINDINGS OF FACT:

- 1) On or about August 10, 2010, Respondent submitted a mail-in Children's Medicaid review form. Department's representative, the Repayments Investigator who investigated the case, testified that Respondent reported her spouse adopted Respondent's youngest child. He testified that at the time that the spouse was the step-father of Respondent's child, his income did not count toward her Medicaid eligibility and as such, the child received Qualified Child Medicaid (MQCA). He added that when Respondent's spouse adopted the child, his income then counted toward her Medicaid eligibility, and she was no longer eligible for MQCA. Department's Representative submitted a comment from Respondent's case record written by an eligibility worker which indicated that the review form was entered and the child's Medicaid coverage changed from MQCA to WV CHIP effective in September 2010. (Exhibit M-1.) Department's representative also submitted a copy of a letter reprinted from Respondent's case record, dated August 11, 2010, informing Respondent that her daughter's Medicaid coverage would change. (Exhibit M-5.)
- 2) Department's representative submitted into evidence another comment written in Respondent's SNAP case record, indicating that Respondent had called the WV DHHR, [REDACTED] Office, on September 23, 2010, to report that she and her spouse were separated, and he was no longer living in her home. (Exhibit M-2.) Department's representative submitted a copy of a second letter reprinted from Respondent's case record, dated September 24, 2010, confirming Respondent's household composition without her spouse, and informing her that her daughter's Medicaid coverage would change back from WV CHIP to MQCA. (Exhibit M-6.)
- 3) Department's Representative testified that a DHHR Criminal Investigator took a statement from an eligibility worker who was Respondent's brother-in-law and who lived in another county of WV, on December 15, 2010. (Exhibit M-7.) The statement reads in part:

“My sister-in-law, [Respondent] called [statement-givers wife] and I at home sometime during the week of September 18, 2010. She talked to me about Medicaid income guidelines. She said [Respondent's spouse] had adopted [Respondent's daughter] and when this was reported it switched [daughter] from Medicaid to CHIP. [Daughter] was needing dental work and the doctor said CHIP wouldn't cover it but Medicaid would. [Respondent] asked if she reported [spouse] out of the house would she be eligible? [Statement-giver] told her, ‘I wouldn't say he's out of the house.’ . . . To the best of my knowledge, [spouse] has not left the home at any time . . . I have never been aware of any incident where he has left the home except for one time about six years ago, he left for about a week.”

Department's Representative testified that he informed the WV DHHR, [REDACTED] County office, and an eligibility worker there re-added Respondent's spouse to Respondent's household. He added that this closed Respondent's SNAP benefits effective February 1, 2011.

- 4) 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.

...

- 5) 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.

- 6) Department's representative submitted a Food Stamp [now SNAP] Claim Determination form (Exhibit M-11) wherein he calculated the amount of SNAP benefits received in Respondent's AG from the time she reported her spouse out of the home, September 23, 2010, to the last month Respondent received SNAP benefits, January 2011. He testified that Respondent improperly received \$3067 in SNAP benefits during that time. He testified that with the spouse's earned income, Respondent's AG was not eligible for SNAP benefits.
- 7) Respondent testified that she submitted four statements to the [REDACTED] County office of the WV DHHR. (Exhibits R-1, R-2, R-3 and R-4.) She testified that these statements were from individuals who knew her spouse was not in the home. Three of these statements are on a DHHR household composition verification form. Each states, "I [statement-giver's name] do verify that the household of [Respondent] residing at [Respondent's street address] consists of the following people." Each letter then lists Respondent and her four children. Each letter is signed and addressed by the statement-giver. Exhibit R-4 is a letter written and signed by the same person who completed the household composition verification form labeled as Exhibit R-1. It states, "To Whom It May Concern: [Respondent's spouse] has been living with me in my home since September 2010."

## **VIII. CONCLUSION OF LAW:**

- 1) The Department's evidence and testimony indicates that the Respondent reported her spouse had adopted one of her children, and this caused the child's Medicaid coverage to switch from Qualified Child to WV CHIP.
- 2) The Department's evidence and testimony indicates that soon after the Medicaid coverage switched to WV CHIP, Respondent made a telephone call to a family member who was familiar with DHHR policy and asked him if reporting her spouse out of the household would cause the Medicaid coverage to switch back to Qualified Child.

- 3) The Department's evidence and testimony indicates that within days after this telephone call events reported in this statement, Respondent reported to the [REDACTED] County office of the WV DHHR that her spouse had left the home, and the Medicaid switched from WV CHIP to Qualified Child.
- 4) Respondent's evidence and testimony indicates that three individuals wrote statements to the Department to avow that Respondent lives in her home with her four children only. One of these individuals wrote another statement to the effect that Respondent's spouse lives with him.
- 5) The evidence and testimony of the Department and the Respondent are contradictory, with the Department presenting evidence to indicate Respondent's spouse lives with her and the Respondent presenting evidence to indicate her spouse does not. However, the coincidence of the evidence provided by the Department, in the fact that Respondent received notice that her daughter's Medicaid would shift to a less comprehensive program of coverage, then purportedly called a family member to ask if reporting her spouse as out of the household would affect her Medicaid benefits, then reported the spouse as out of the household, gives more credence to the Department's assertion of the facts.
- 3) 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 \$3067 for the period October 1, 2010 through January 31, 2011, and to close Respondent's SNAP benefits.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Respondent's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 4<sup>th</sup> Day of May, 2011.**

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**Stephen M. Baisden  
State Hearing Officer**