



**STATE OF WEST VIRGINIA
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

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

**Christopher G. Nelson
Interim Inspector General**

February 5, 2024

[REDACTED]

RE: [REDACTED] v. WVDH
ACTION NO.: 23-BOR-3593

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 the Department of Human Services. These same laws and regulations are used in all cases to ensure 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,

Tara B. Thompson
State Hearing Officer
Member, State Board of Review

Encl: Defendant's Recourse to Hearing Decision
Form IG-BR-29

cc: Donald Greathouse, Investigations and Fraud Management

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

[REDACTED],

Defendant,

v.

Action Number: 23-BOR-3593

**WEST VIRGINIA DEPARTMENT OF
HEALTH INVESTIGATIONS & FRAUD MANAGEMENT,**

Movant.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from an administrative disqualification hearing for [REDACTED] that the Movant requested on December 4, 2023. This hearing was held in accordance with the provisions found in Chapter 700 of the Office of the Inspector General's Common Chapters Manual and Federal Regulations at 7 CFR § 273.16. The hearing was convened on January 9, 2024.

The matter before the Hearing Officer arises from a request by the Department for a determination as to whether the Defendant has committed an intentional program violation and should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for twelve months.

At the hearing, the Movant appeared by Donald Greathouse. The Defendant failed to appear. The Movant's representative was placed under oath and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Benefit Recovery Referral, dated October 25, 2023
 Benefit Recovery Referral, dated May 22, 2023
- M-2 SNAP Claim Determination
 Case Benefit Summary
- M-3 IFM Appointment Notice, dated October 23, 2023
- M-4 Advanced Notice of ADH Waiver, dated October 31, 2023
- M-5 Case Comments, March 3 through June 3, 2021
 SNAP Interim Contact Form, dated March 22, 2021
- M-6 Notice, dated March 26, 2021
- M-7 Employee Ledger Card Report for [REDACTED]
- M-8 SNAP and Medicaid Review, received September 24, 2021
 Case Comments, dated November 1 through December 6, 2021
- M-9 SNAP Interim Contact Form, received April 1, 2022

- M-10 SNAP and Medicaid Review Form, received September 30, 2022
Case Comments, dated September 6 through October 18, 2022
- M-11 Electronic Code of Federal Regulations (e-CFR) § 273.16
- M-12 West Virginia Income Maintenance Manual (WVIMM) § 11.2.3.A.2
- M-13 WVIMM § 1.2.4

Defendant'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 Defendant received SNAP benefits for a six-person Assistance Group (AG) — including her husband, [REDACTED] from June 1 through December 2021 (Exhibits M-2, M-5, and M-8 through M-10).
- 2) The Defendant received SNAP benefits from January 1, 2022, through October 31, 2022 (Exhibit M-2 and M-8 through M-10).
- 3) On October 25, 2023, the Movant received a Benefit Recovery Referral from the Department of Human Services (DoHS) alleging that [REDACTED] had unreported income that placed the household over the SNAP income eligibility limit from June 1 through October 31, 2021 (Exhibit M-1).
- 4) On May 22, 2023, the Movant received a Benefit Recovery Referral alleging that the Defendant's husband had under-reported income from November 1, 2021, through October 31, 2022 (Exhibit M-1).
- 5) On October 31, 2023, the Movant issued a notice advising the Defendant that a completed investigation had concluded she committed an intentional program violation (IPV) of a SNAP rule by "failing to accurately report employment income" (Exhibit M-4).
- 6) On March 25, 2021, the Movant submitted her SNAP Interim Contact Form and completed her eligibility interview (Exhibit M-5).
- 7) On March 25, 2021, the DoHS worker recorded:
client reported that uci ended for [REDACTED], verified thru our system that he received one payment in march end dated income. client reported that [REDACTED] returned to work and is paid weekly. she reported the net income on review form. They provided one pay that he received so far. used this pay to anticipate income since it is what client reported on review form and if

she didn't verify any more she would still receive the benefits if I didn't take her statement or it would be error on my end, no other changes reported. snap passing and lowered (Exhibit M-5).

- 8) The supplied March 18, 2021 paystub reflected [REDACTED] gross earned income for the weekly pay period was \$816.00 (Exhibit M-5).
- 9) After taxes and deductions, the net income reflected on the March 18, 2021 paystub was \$633.01 (Exhibit M-5).
- 10) On the March 25, 2021 Interim Contact Form, the Defendant marked "Yes," to the #4 *Household Earned Income* question inquiring about whether the household's gross income had increased or decreased by more than \$100 from the \$0 income amount on record (Exhibit M-5).
- 11) On the March 25, 2021 Interim Contact Form, the Defendant marked "Yes," to the #4 *Household Earned Income* question inquiring about whether anyone in the household had a change in earnings because they changed, started, or stopped a job (Exhibit M-5).
- 12) On the March 25, 2021 Interim Contact Form, the Defendant indicated, by handwriting, that [REDACTED] employer was [REDACTED] beginning on March 10, 2021, and that he was paid \$633.01 weekly (Exhibit M-5).
- 13) The March 25, 2021 Interim Contact Form reflected a pre-populated typed monthly gross unearned income of \$1,535.10 (Exhibit M-5).
- 14) On the March 25, 2021 Interim Contact Form, the Defendant marked "Yes," and hand wrote, "no longer receiving," and "UCI" in response to the #5 *Household Unearned Income* question inquiring about whether the source or amount of the household's gross unearned income had changed (Exhibit M-5).
- 15) The Defendant affirmed by handwritten signature that statements on the form were true and correct to the best of her knowledge (Exhibit M-5).
- 16) On March 26, 2021, the Defendant was approved for SNAP benefits for a six-person AG and was notified her SNAP benefit allotment would decrease from \$871.00 to \$344.00, effective May 1, 2021, because the AG's earned income increased to \$3,508.80 (Exhibit M-6).
- 17) The Movant's March 26, 2021 SNAP allotment amount was based on \$3,508.80 monthly gross income for the AG (Exhibit M-6). After deductions, the notice reflected \$2,564.04 monthly net adjusted income for the AG (Exhibit M-6).
- 18) The March 26, 2021 notice specified that the AG was responsible for reporting when the gross income of the AG increased to more than \$5,860.00 per month (Exhibit M-6).

- 19) The March 26, 2021 notice indicated the SNAP gross income limit was \$3,809.00 and the SNAP net income limit was \$2,930.00 (Exhibit M-6).
- 20) [REDACTED] received earned income from [REDACTED] from June 2020 through November 2020, and from March 2021 through March 2023 (Exhibit M-7).
- 21) [REDACTED] routinely earned regular and overtime income each pay period (Exhibit M-7).
- 22) On October 4, 2022, the DoHS worker recorded that [REDACTED] made “approx. \$6000 per month. He is employed currently and paid weekly” (Exhibit M-10).

APPLICABLE POLICY

Income

West Virginia Income Maintenance Manual (WVIMM) § 4.4.1.B *Consideration of Past Income* provides in relevant sections: The Worker must determine the amount of income received by all persons in the income group (IG) in the 30 calendar days before the application/redetermination date, or interview date when the interview is completed on a different day than when the application is received The income from these 30 days is the minimum amount of income that must be considered. When, in the Worker’s judgment, future income may be more reasonably anticipated by considering the income from a longer period, the Worker considers income for the period he determines to be reasonable.

WVIMM § 4.4.1.D *How to Use Past and Future Income* provides in relevant sections: The worker determines the amount of monthly income, based on the frequency of receipt and whether the amount is stable or fluctuates When income is received weekly and the amount fluctuates, the worker is instructed to find the average amount per period and convert it to a monthly amount.

To convert weekly income to a monthly amount, multiply the actual or average weekly amount by 4.3.

WVIMM Chapter 4, Appendix A *Income Limits* (March 2021) provides in relevant sections: For a six-person Assistance Group (AG), gross 130% was \$3,809 and gross 200% was \$5,860.

Change Reporting and Verification

West Virginia Income Maintenance Manual § 1.2.4 provides in the relevant part:

The client's responsibility is to provide complete and accurate information about her circumstances so that the worker is able to make a correct determination about her eligibility.

WVIMM § 10.4.2 *Client Reporting Requirements* provides in relevant sections:

All SNAP assistance groups (AGs) must report changes related to eligibility and benefit amount at application and redetermination. SNAP AGs are subject to limited reporting requirements

WVIMM § 10.4.2.A *Limited Reporting* provides in relevant sections:

When approved with a gross non-excluded income at or below 130% of the Federal Poverty Level (FPL), an AG must report when the total gross non-excluded earned and unearned income of the Income Group (IG) exceeds 130% of the FPL for the number of individuals in the original AG.

When approved with a gross non-excluded income above 130% of the FPL, an AG must report when the total gross non-excluded earned and unearned income of the IG exceeds 200% of the FPL for the number of individuals in the original AG.

Code of Federal Regulations 7 CFR § 273.2(e)(1) *Interviews* provides in relevant parts:

... The interviewer must advise households of their rights and responsibilities during the interview, including the appropriate application processing standard and the household's responsibility to report changes.

Code of Federal Regulations 7 CFR § 273.2(f)(6) *Documentation* provides in relevant parts:

Case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

Code of Federal Regulations 7 CFR § 273.12(a)(2) provides in relevant part:

Certified households must report changes within 10 days of the date the change becomes known to the household, or at the State agency's option, the household must report changes within 10 days of the end of the month in which the change occurred.

Intentional and Unintentional Program Violations

Code of Federal Regulations 7 CFR § 273.16(a)(1) *Disqualification for intentional Program violation* provides in relevant parts: The State agency is responsible for investigating cases of alleged intentional program violation. Administrative disqualification procedures should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional Program violation.

Code of Federal Regulations 7 CFR § 273.16(b)(1)(i) *Disqualification penalties* provided in relevant parts: Individuals found to have committed an IPV through an ADH shall be ineligible to participate in the program for twelve months for the first IPV.

Code of Federal Regulations 7 CFR § 273.16(c)(1) and (2) *Definition of intentional Program violation* provides in relevant sections: Intentional Program violations shall consist of having intentionally:

- Made a false or misleading statement, or misrepresented, concealed, or withheld facts; or
- Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits or EBT cards.

WVIMM § 11.2 *SNAP Claims and Repayment Procedures* provides in relevant sections:

When an AG has been issued more 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.

WVIMM § 11.2.3.A *UPV Claims* provides in relevant sections: There are two types of UPVs — client errors and agency errors.

A UPV claim may be established when:

- An error by the [Department] resulted in the over-issuance
- An unintentional error made by the client resulted in the over-issuance ...

A client error UPV is established retroactively for the six years preceding the month of discovery. An agency error is only established retroactively for the one year preceding the date of the discovery.

WVIMM § 11.2.3.A.1 *Agency Errors* provides in relevant sections: For a failure to take prompt action, the first month of over-issuance is the month the change would have been effective had the agency acted promptly. For a computation error, the first month of over-issuance is the month the incorrect allotment was effective.

DISCUSSION

The Movant petitioned the Board of Review for an Administrative Disqualification Hearing (ADH) to establish that the Defendant committed an Intentional Program Violation (IPV) of the Supplemental Nutrition Assistance Program (SNAP). The Movant asserted that the Defendant committed an IPV by intentionally failing to report changes in her household's income as required. The Movant requested that the Defendant be disqualified from SNAP benefits for twelve months. The Defendant was notified of the ADH scheduling and failed to appear. The hearing was held in the Defendant's absence according to the applicable federal regulations.

Burden of Proof

The submitted evidence revealed that the Defendant received SNAP benefits for a six-person Assistance Group (AG). During a March 2021 SNAP eligibility review, the DoHS found the Defendant's household eligible for continued SNAP benefits through the October 2021 certification period.

The Movant asserted that an IPV was committed, after the March 2021 SNAP eligibility review, when the Defendant failed to notify the agency that the AG's income exceeded the applicable SNAP income eligibility limit in April 2021. As a result of the Defendant's failure to report the AG's income increase, the Movant's representative argued that the AG was over-issued SNAP benefits, beginning in June 2021.

To prove that the Defendant committed an IPV that resulted in an over-issuance of SNAP benefits, beginning in June 2021, the Movant had to verify by clear and convincing evidence that:

- the DoHS notified the Defendant of her household's income reporting requirements; and
- the Defendant intentionally made false or misleading statements, or misrepresented, concealed, or withheld facts about the household's income to obtain SNAP benefits, beginning in June 2021, that she was not entitled to receive.

Reporting Requirements

During the hearing, the Movant's representative argued that the Defendant had a responsibility to report when her income exceeded the \$3,809 SNAP income eligibility limit for a six-person AG. The Movant's representative reviewed Exhibit M-6, page 4, and testified that \$3,809 was the SNAP gross income eligibility limit for a six-person AG.

During the hearing, the Movant's representative asserted that [REDACTED] income exceeded \$3,809 each month, beginning in April 2021. The Movant's representative contended that the Defendant was required to report, by May 10, 2021, when the household's April 2021 gross earned income exceeded \$3,809 and that subsequent eligibility changes should have taken effect in June 2021.

The Movant had to prove by clear and convincing evidence that the DoHS worker notified the Defendant that she was required to report when the household's gross monthly income exceeded \$3,809. The regulations require the State agency interviewer to advise households of their responsibilities, including the appropriate application processing standard and the household's responsibility to report changes. The regulations stipulate that the agency's case files must be documented to support eligibility, ineligibility, and benefit level determinations. The regulations further specify that the documentation must be sufficient in detail to permit a reviewer to conclude the reasonableness and accuracy of the determination.

The Movant's evidence demonstrated that the Defendant was subject to limited income reporting requirements. On March 26, 2021, the Defendant was notified she was required to report when the AG's income exceeded \$5,860 — 200% of the Federal Poverty Level (FPL) for a six-person AG.

The Defendant's household was approved for SNAP benefits for a six-person AG, with a certification period ending on October 31, 2021 (Exhibit M-6). The Defendant's March 2021 SNAP benefit approval was based on \$3,508.80 verified gross monthly earned income (Exhibit M-6), which was below \$3,809 — 130% of the FPL for a six-person AG. According to the policy, when approved with a gross non-excluded income at or below 130% of the FPL, an AG must report when the total gross non-excluded earned and unearned income of the Income Group (IG) exceeds 130% of the FPL for the number of individuals in the original AG.

When the Movant notified the Defendant of her income reporting requirement, the amount provided was 200% of the FPL (Exhibit M-6), not the correct reporting amount of \$3,809. The case comments did not verify that the DoHS Worker advised the AG of the correct reporting amount during her March 2021 SNAP eligibility interview. No evidence was submitted to explain the deviation between the listed 200% of the FPL income reporting amount and the 130% of the FPL the policy instructs should be listed on the notice.

The Movant failed to prove by clear and convincing evidence that the March 2021 DoHS notice correctly advised the Defendant she was required to report when the AG's income exceeded \$3,809.

Intentional Program Violation

During the hearing, the Movant's representative testified that the AG's income was within the SNAP income eligibility limit during the Defendant's March 2021 eligibility determination but exceeded the SNAP income eligibility limit in April 2021. The Movant asserted the first month of SNAP over-issuance due to IPV was June 2021.

A SNAP recipient may be disqualified from SNAP eligibility for twelve months when an individual is found to have committed an IPV through an ADH. To prove that the Defendant committed an IPV to obtain SNAP, the Movant had to demonstrate by clear and convincing evidence that the Defendant was notified of her income reporting responsibilities, that the AG's income exceeded \$3,809 in April 2021, and that the Defendant intentionally failed to report the income change as required.

Income

The policy stipulates that the worker must consider income received by the household within the 30 calendar days before the redetermination date, or interview date when the interview is completed on a different day than when the application is received. According to the policy instructions, to obtain a monthly amount of gross income for the AG, the worker must determine an average amount of weekly income.

Pursuant to the submitted evidence, the household's April 2021 gross earned income was received from the following pays:

| | |
|-----------------|-------------------------------------|
| April 1, 2021: | \$1,394.00 |
| April 8, 2021: | 992.80 |
| April 15, 2021: | 1,271.60 |
| April 22, 2021: | 1,312.40 |
| April 29, 2021: | <u>+ 1,394.00</u> |
| | \$6,364.8 Total gross earned income |

$\$6,364.8 \text{ Total gross earned income} \div 5 = \$1,272.96 \text{ average gross weekly income}$

According to the policy, the worker must then take the average weekly income and multiply the amount by 4.3.

| |
|--|
| \$1,272.96 average gross weekly income |
| <u>X 4.3</u> |
| \$5,473.73 gross monthly earned income |

If the Movant had correctly notified the Defendant of her requirement to report household income exceeding 130% of the FPL, she would have been required to report the household's income had exceeded 130% of the FPL by May 10, 2021.

The Movant proved by clear and convincing evidence that the first month the AG was overissued SNAP benefits was June 2021, due to an agency error. The policy provides that when an agency error results in the SNAP over issuance, a UPV claim may be established, not an IPV. The policy instructions only permit the Movant to institute a UPV claim retroactively for the year preceding the date of the discovery. The submitted evidence indicated the error was not discovered until 2023, which is beyond the year permitted to establish a UPV for SNAP over issuance caused by an agency error.

Because the evidence revealed that the Defendant's June 2021 SNAP over issuance occurred because of an agency error, the Movant failed to prove by clear and convincing evidence that the Defendant intentionally failed to comply with the SNAP income reporting requirements. Because the evidence failed to establish that the Defendant committed an IPV, the Movant's request to disqualify the Defendant from SNAP eligibility for twelve months cannot be granted.

CONCLUSIONS OF LAW

- 1) A period of SNAP eligibility disqualification may be applied when a client commits an intentional program violation of the SNAP rules by intentionally making a false or misleading statement, or misrepresenting, concealing, or withholding facts to obtain SNAP benefits.
- 2) Because the Defendant's AG was approved for SNAP benefits, beginning in March 2021, based on verified income below 130% of the FPL for a six-person AG, the

policy stipulates that the agency was required to notify the AG of its responsibility to report when the AG's income exceeded \$3,809 — 130% of the FPL.

- 3) The Movant proved by clear and convincing evidence that an agency error occurred when the agency failed to notify the AG of its responsibility to report when the AG's income exceeded \$3,809 per month.
- 4) The Movant proved by clear and convincing evidence that the AG's income exceeded 130% of the FPL in April 2021.
- 5) Because the agency failed to notify the Movant of her income reporting requirements, the Defendant was over-issued SNAP benefits, beginning in June 2021.
- 6) Because the Movant proved by clear and convincing evidence that an agency error resulted in the Defendant's AG receiving over-issued SNAP benefits, beginning in June 2021, the Movant's request to disqualify the Defendant from SNAP eligibility due to an intentional program violation cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation and a first-offense 12-month SNAP disqualification penalty period should not be applied.

ENTERED this 5th day of February 2024.

Tara B. Thompson, State Hearing Officer

