



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 27, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 24, 2005. Your hearing request was based on the Department of Health and Human Resources' action to establish a Food Stamp overissuance claim of \$278 for the period of October through November, 2004 and to require repayment of the claim.

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 is based on current policy and regulations. Some of these regulations state as follows: when the 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 or Intentional Program Violation claim (WV Income Maintenance Manual Section 20.2) and the decision related to the claim is subject to a Fair Hearing (7 CFR 273.18).

The information which was submitted at your hearing revealed that a Food Stamp overissuance occurred in the amount of \$278 during the period of October through November, 2004 and the overissuance must be repaid.

It is the decision of the State Hearings Officer to uphold the action of the Department to establish a Food Stamp overissuance claim in the amount of \$278 for the period of October through November, 2004 and to require repayment of the claim.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Debbie Roberts, Repayment Investigator

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

_____,
Claimant,

v.

Action Number: 05-BOR-4877

**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 October 24, 2005 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 24, 2005 on a timely appeal, filed January 27, 2005. It should be noted that the hearing was originally scheduled for March 15, 2005, April 14, 2005, June 8, 2005, July 25, 2005, and September 20, 2005 but was rescheduled the first two (2) times at claimant's request, then at Department's request, and the final two (2) times at claimant's request. It should also be noted here that repayment of benefits has been pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Food Stamp Program 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

III. PARTICIPANTS:

1. _____, Claimant.
2. Debbie Roberts, Repayment Investigator.
3. Deborah Cooper, Caseworker.

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

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department took the correct action to establish a Food Stamp overissuance claim in the amount of \$278 for the period of October through November, 2004 and to require repayment of such claim.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 10.3, 10.4, 20.2.
Federal Food Stamp Regulations Sections 273.18.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 Copy of Benefit Recovery Referral.
- DHS-2 Copy of Combined Application and Review Form 8-10-04 (13 pages).
- DHS-3 Copy of Rights and Responsibilities 8-10-04 (11 pages).
- DHS-4 Copy of case comments 8-25-04.
- DHS-5 Copy of case comments 8-25-04.
- DHS-6 Copy of case comments 10-1-04.
- DHS-7 Copy of case comments 10-26-04.
- DHS-8 Copy of case comments 11-1-04.
- DHS-9 Copy of case comments 11-9-04.
- DHS-10 Copy of case comments 12-2-04.
- DHS-11 Copy of Food Stamp claim determination (14 pages).
- DHS-12 Copy of WV Income Maintenance Manual Section 2.2 B (2 pages).
- DHS-13 Copy of WV Income Maintenance Manual Section 20.1 (5 pages).
- DHS-14 Copy of notification of Food Stamp overissuance 1-26-05 (2 pages).

Claimant's Exhibits

- CI-1 Copy of Vehicle System Master Inquiry (7 pages).
- CI-2 Copy of letters of recommendation for _____ (2 pages).
- CI-3 Copy of letter regarding Food Stamp EBT 10-18-05.
- CI-4 Copy of Notice of Delinquency from Sheriff of _____ Co.

VII. FINDINGS OF FACT:

- 1) The Department entered evidence marked as Exhibit #DHS-1 through #DHS-14 into the record and the hearsay evidence rule was explained to the claimant who offered no objections as all parties involved were available to testify.
- 2) The claimant entered evidence marked as Exhibit #CI-1 through #CI-4 into the record.
- 3) The claimant was an active recipient of the Food Stamp Program when he received an incorrect amount of Food Stamps for the period of October through November, 2004 due to earned income which was not considered as Food Stamp countable income and a Food Stamp overissuance claim was established in the amount of \$139 each for the months of October and November, 2004 for a total of \$278 (Exhibit #DHS-11).
- 4) The claimant returned to work at [REDACTED] on or about 9-7-04 and attempted to report his return to work by phone to his caseworker in the local DHHR office (Deborah Cooper) on 10-1-04 (Exhibit #DHS-6) but Ms. Cooper instructed Mr. _____ that he needed to report his return to work to the Customer Service Center (CSC).
- 5) Mr. _____ reported his return to work to the CSC on 10-26-04 (Exhibit #DHS-7) but the earned income was not counted until effective December, 2004 and a Food Stamp overissuance occurred for the months of October and November, 2004 in the amount of \$278.
- 6) Notification of a Food Stamp overissuance due to client error was issued on 1-26-05 (Exhibit #DHS-14) and the claimant requested a hearing on 1-27-05.
- 7) The hearing was to be convened on 3-15-05 but on 3-11-05, the claimant requested a continuance by phone in order to attempt to obtain assistance from Legal Aid. The hearing was rescheduled for 4-14-05 at which time the claimant requested the presence of Department employees who were unavailable to participate that day. The hearing was rescheduled for 6-8-05 but was rescheduled at the request of Ms. Roberts. The hearing was rescheduled for 7-25-05 and 9-20-05 but was rescheduled both times at claimant's request. The State Hearing Officer sent a letter to the claimant on 7-26-05 providing him with information about the name and phone number of Legal Aid of WV. The claimant did not obtain legal assistance and the hearing was convened on 10-24-05.
- 8) Ms. Roberts testified that the claimant failed to report his return to work and his earned income from [REDACTED] in a timely manner (within 10 days) although he had acknowledged his understanding of the Rights and Responsibilities by affixing his signature on 8-10-04 (Exhibit #DHS-3) and included in those was the requirement that he would have to repay any Food Stamp benefits for which he was not eligible and the requirement that a change in earned income must be reported within 10 days.
- 9) Ms. Roberts testified that all overissuances are referred for repayment regardless of the amount.
- 10) Mr. _____ testified that Ms. Cooper's recording of 10-1-04 (Exhibit #DHS-6) stated that he reported that he did not have his automobile available but he owns no automobile and that this showed that Ms. Cooper was lying, that Ms. Cooper was

hostile to him, that he requested the presence of Ms. Cooper's supervisor (Sharon Lohr) and that Ms. Cooper was not the one who requested her presence, and that he promptly reported to Ms. Cooper around September 7, 2004 that he had gone back to work within two (2) weeks of his surgery.

- 11) Ms. Cooper was called to testify at the claimant's request and testified that she wanted her supervisor present during the interview with Mr. ____ as there was hostility, that she may have put automobile in her recording instead of motorcycle, and that a change in income can only be taken by the local office if the person reporting it is in the local office and that changes reported by phone must be reported to the CSC.
- 12) Mr. ____ testified that he requested Ms. Lohr's presence, that he was not hostile, that he told Ms. Cooper he did not own a car, that he promptly reported his return to work to Ms. Cooper, that he was not negligent, that he went back to work on 9-9-04 and did not wait until 10-1-04 to report it, that there has been gross mismanagement of his case, and that Ms. Cooper and the Community Service Manager (Joyce McCormick-Arthur) discriminated against him.
- 13) The State Hearing Officer explained to Mr. [REDACTED] that a claim of discrimination could not be addressed by the State Hearing Officer but that his complaint would be forwarded to the proper entity responsible for investigating a claim of discrimination and the State Hearing Officer forwarded Mr. ____'s complaint to Erika Young, Director of the State Board of Review who forwarded the complaint to the Civil Rights Compliance Director.
- 14) WV Income Maintenance Manual Section 20.1 states, in part:

"The Department is responsible for accurately determining the client's eligibility for Food Stamps, cash assistance (AFDC/U, TANF, and WV WORKS) and Medicaid. When it is discovered that excess benefits have been issued, corrective action must be taken."
- 15) WV Income Maintenance Manual Section 20.2 states, in part:

"When an AG 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 coupon allotment received by the AG and the coupon allotment the AG was entitled to receive....."

NOTE: Referrals are made for all overissuances, regardless of the dollar amount. Claims are not written for under \$50 unless there is a liable debtor receiving Food Stamps at the time the claim is referred, the error is discovered as the result of a QZ review, or it is an IPV claim. In these three situations claims under \$50 are written and collected. IPV claims must be established regardless of the total amount or participation status of the liable debtor(s). See Section 20.2 E for definition of who is a liable debtor.....

C. IDENTIFYING THE MONTH(S) AND AMOUNT FOR WHICH CLAIMS ARE ESTABLISHED

The number of month(s) for which claims are established depend on whether it is an IPV or UPV.....

Claims are not established for excess benefits received solely due to the 13-day advance notice period.

1. UPV Claims

There are two 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.

NOTE: Items a and b below are used when the overissuance is not contested in a Fair Hearing. If a Fair Hearing is held, the Hearings Officer's decision is final.

A client error UPV is only established retroactively for the 6-year period preceding the month of discovery. An Agency error is only established retroactively for the one-year period preceding the date of the claim.

The Repayment Investigator determines the month in which the overissuance initially occurred as follows:

a. Agency Errors

(1) Failure to Take Prompt Action

The first month of overissuance is the month the change would have been effective had the agency acted promptly.....

b. Client Errors

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

NOTE: When determining the amount of overissuance due to the failure of the household to report earned income in a timely manner, the amount of the benefits the client should have received is computed without applying the earned income disregard to any portion of the income the client did not report. This applies to IPV claims for benefits issued for October, 1987 and later and to UPV claims established on or after November 1, 1996.....

2. IPV Claims

IPV's include making false or misleading statements, misrepresentations, the concealing or withholding of facts, and committing any act that violates the Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.....

An IPV can only be established in the following ways:

- The client signs an IG-BR-44, Waiver of Rights to ADH.....

D. FACTORS AFFECTING THE AMOUNT OF THE CLAIM

There are no special factors affecting the amount of the Food Stamp claim.

E. COLLECTING THE CLAIM

Collection action is initiated against the AG which received the overissuance. When the AG composition changes, collection is pursued against any and all AG's which include a liable debtor.....

2. Claim Notification

a. UPV Claims

The AG is notified of the Food Stamp claim by computer-generated notification/demand payment letters from RAPIDS. Enclosed with the letter is a repayment agreement, form ES-REPAY-1 and a postage-paid envelope.....

3. Collecting Procedures

a. Offsetting Lost Benefits

A claim, whether UPV or IPV, must be collected by offsetting when lost benefits are owed to the AG, but have not yet been restored.....

b. Treasury Offset Program (TOP)

All IPV and client UPV claims are subject to collection through the Treasury Offset Program (TOP). Claims which have a payment balance of at least \$25 are delinquent and are not over 10 years old, are subject to referral for collection of the claim by offset of the client's federal income tax refund and any federal benefits/payments. Agency caused UPV claims, established on or after 11-1-96, are eligible for Treasury Offset Program collection under the condition described above. Judgment claims are not subject to the 10-year limitation.....

F. DETERMINING THE REPAYMENT AMOUNT

The minimum amount of repayment is determined as follows:

1. UPV Client and Agency errors

(a) Current Recipients

The current coupon entitlement is reduced by 10% or \$10, whichever is greater.

(b) Former Recipients

Form ES-REPAY-1 offers the liable debtor the following options for repayment.

(1) Lump Sum Payment

One payment is made to pay the claim in its entirety.

(2) Installment Payments

When the AG is financially unable to pay the claim in one lump sum, regular monthly installment payments are accepted. The minimum amount of the monthly payment is \$50. If the CI/RI determines that the AG cannot afford the minimum payment, the payment amount is negotiated on a case-by-case basis.....

G. RIGHT TO A FAIR HEARING

The client has 90 days from the date of the initial notification/demand payment letter in which to request a Fair Hearing. The Hearings Officer only rules on the type and amount of the claim."

16) Federal Food Stamp regulations contained in 7 CFR 273.18 state, in part:

"Claims against households.

(a) General. (1) A recipient claim is an amount owed because of:

- (i) Benefits are overpaid or
- (ii) Benefits are trafficked....

(2) This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations.....

(b) Types of claims. There are three types of claims:

- (1) Intentional Program Violation (IPV) claim.....
- (2) Inadvertent household error (IHE) claim.....

(3) Agency error (AE) claim. Any claim for an overpayment caused by an action or failure to take action by the State agency.....

(c) Calculating the claim amount.....

(3) Notification of the claim. (i) Each State Agency must develop and mail or otherwise deliver to the household written notification to begin collection action on any claim.....

(iii) If the claim or the amount of the claim was not established at a hearing, the State agency must provide the household with a one-time notice of adverse action. The notice of adverse action may either be sent separately or as part of the demand letter.

(iv) The initial demand letter or notice of adverse action must include language stating:

(A) The amount of the claim.....

(I) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim, The household will have 90 days to request a hearing."

- 17) The areas of dispute relevant to the Food Stamp overissuance claim involved the timing of the report of the claimant's return to work and the fact that the claimant alleges that the overissuance claim has been established due to discrimination on the part of Ms. Cooper and Ms. McCormick-Arthur. There is no dispute that an overissuance of Food Stamps occurred in the amount of \$278 for the months of October and November, 2004. In regard to the timing of the report of the claimant's return to work, the claimant testified that he reported his return to work in a timely manner (around 9-9-04) and the Department records show that the first report of the claimant's return to work was on 10-1-04 and that he officially reported his return to work to the CSC on 10-26-04. Regardless of when the return to work was reported or the reason for the establishment of the claim, an overissuance of Food Stamps still occurred and a Food Stamp overissuance claim must be established.

VIII. CONCLUSIONS OF LAW:

WV Income Maintenance Manual Section 20.1 states that the Department is responsible for accurately determining the client's eligibility for Food Stamps and that when it is discovered that excess benefits have been issued, corrective action must be taken. WV Income Maintenance Manual Section 20.2 states that when an AG has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation. That same section states that if the amount of the overissuance is due to the failure of the household to report earned income in a timely manner, the amount of benefits the client should have received is computed without applying the earned income disregard to any portion of the earnings the client did not report. While the claimant testified that he reported the employment and earnings in a timely manner, the first recorded report of the claimant's return to work was on 10-1-04. Absent any proof to the contrary, the State Hearing Officer must accept this date as the first date of the report of Mr. ____'s return to work. However, regardless of whether the return to work was reported in a timely manner, a Food Stamp overissuance still would have occurred and a Food Stamp claim would have been established due to the earned income not being counted in determining the amount of Food Stamps for the months of October and November, 2004. Regardless of who caused the error which resulted in a Food Stamp overissuance, an overissuance claim would have to be established and repayment is

required. The Department has correctly determined the overissuance of \$278 for the period of October through November, 2004.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to establish a Food Stamp overissuance claim in the amount of \$278 for the period of October through November, 2004 and to require repayment of the claim.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of October, 2005.

**Thomas M. Smith
State Hearing Officer**