

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 21, 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 February 8, 2005 on a timely appeal filed January 5, 2005.

It should be noted here that Ms. _____ was not receiving Food Stamp Benefits at the time of the fair hearing.

A pre-hearing conference was held between the parties. Ms. _____ did not have legal representation in this particular matter. Ms. _____ participated by conference call, since the State Hearing Officer only holds hearings in the _____ District DHHR Office on Tuesdays.

All parties agreed to provide truthful information during the hearing

II. PROGRAM PURPOSE:

The Program entitled FOOD STAMPS 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 food coupons to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

_____, Claimant (Provided testimony via conference call)
Jennifer Butcher, Repayment Investigator – Office of Inspector General
Addie Fielder, Supervisor – Kanawha District DHHR Office

Presiding at the hearing was Ray B. Woods, Jr., M. L. S., State Hearing Officer and, a Member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

Does Ms. _____ owe a repayment of Food Stamp Benefits for the months of April and May 2004?

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 1.2 (B) (2) OVERVIEW OF THE ELIGIBILITY DETERMINATION PROCESS - Redetermination Process and; West Virginia Income Maintenance Manual Chapter 20.2 C (1) IDENTIFYING THE MONTH(S) AND AMOUNT FOR WHICH CLAIMS ARE ESTABLISHED - UPV

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits:

- D-1 Appointment Letter dated 02/23/04 for annual review
- D-2 Food Stamp Closure letter dated 03/16/04
- D-3 Notice of Decision Letter dated 03/16/04 with Ms. _____'s written response
- D-4 WVIMM Chapter 1.2 (B) (2) OVERVIEW OF THE ELIGIBILITY PROCESS - Redetermination Process
- D-5 Scheduling Notice dated 06/07/04 for 08/10/04 Fair Hearing
- D-6 Pre-Hearing Conference Withdrawal Statement dated 08/10/04
- D-7 Benefit Recovery Referral dated 08/10/04
- D-8 Food Stamp Claim Determination for 04/04 & 05/04 - \$518.00
- D-9 WVIMM Chapter 20.2 C (1) IDENTIFYING THE MONTH(S) AND AMOUNT FOR WHICH CLAIMS ARE ESTABLISHED – UPV
- D-10 Hearing Summary
- D-11 Scheduling Notice dated 01/05/05 for 02/08/05
- D-12 E-mail Message from Ms. _____ dated 01/07/05 re: Hearing Request

Claimant's Exhibits:

- C-1 Hearing Summary

VII. FINDINGS OF FACT:

- 1) At the time of writing this decision, the State Hearing Officer had not received the promised Hearing Summaries from Mrs. Butcher and Ms. _____. Both parties were contacted and, their respective summaries were received.
- 2) Mrs. Butcher submitted the following Hearing Summary:

I. IDENTIFYING INFORMATION

NAME: _____

ADDRESS: _____, [REDACTED] WV [REDACTED]

AGE: _____

CASE #: _____

WORKERS INVOLVED DURING PERIOD IN QUESTION: Patricia Landers and Addie Fielder

II. CASE DATA

DATE OPENED: November 2002 DATE CLOSED: November 30, 2004

OVERPAYMENT PERIOD: April and May 2004

AMOUNT OF FOOD STAMPS OVER ISSUED: \$ 518.00

ELIGIBILITY FACTOR INVOLVED: Failed to complete review, requested a pre-conference hearing, pre-hearing on 8/10/04 and client withdrew. Now has to repay benefits received during time waiting for hearing decision.

III. SUMMARY OF FACTS:

The reason for this Fair Hearing is that Client _____ received Food Stamp benefits for the months of April and May 2004 without an annual review. Ms _____ requested a pre-hearing conference on 3/22/04 asking that her benefits continue while waiting for the decision. Benefits were restored for those two months.

EXB-1 CSLD letter dated 2/23/04 to the address of _____ WV [REDACTED] informing Ms _____ that it was time for her periodical review and her appointment was scheduled for March 4, 2004. The letter also states If we do not interview you, we can not know if you are still eligible or the amount of benefits you should receive. Therefore we are required to close your case after proper notice. If you receive Food Stamps and do not keep your appointment or notify us by the 15th of the month, your Food Stamps will stop. The reason for the closure is in Section 1.4.S of the Income Maintenance Manual. _____ failed to show for her review on March 3, 2004 and failed to reschedule by March 16, 2004.

EXB-2 CMC1 letter dated March 16, 2004 was sent to the same address as above stating that your stamps will close and the last month you will receive will be March 2004. Reason for this letter did not complete an eligibility review on the date scheduled.

EXB-3 The CMC1 letter returned along with a statement on letter stating "I have received NO notification of Eligibility Review. I get all my mail and I open every DHHR document". Also enclosed with this letter were the IM-FH-1 Fair Hearing and/or Conference Request Form dated March 22, 2004 requesting that benefits continue while waiting for the Fair Hearing decision. If the Department is upheld at the Fair Hearing and /or Pre-Conference (if you choose not to continue with a Fair Hearing) you may have to pay the Department back for these benefits.

EXB-4 Income Maintenance Manual Chapter 1.2 B 2 Redetermination Process. "Periodic reviews of total eligibility for recipients are mandated by law. These are redeterminations and take place at specific intervals, depending on the Program or coverage group. Failure

by the client to keep an appointment for a redetermination usually results in Ineligibility. If the client keeps his appointment and continues to be eligible, benefits must be uninterrupted and received at approximately the same time.

The redetermination process involves basically the same activities described in item 1 above. Data system changes and client notification of any changes resulting from the redetermination conclude the process.”

Also in Section E of Chapter 1.2 Client Responsibility it states “When the client is not able to provide the client must be instructed that his failure to fulfill his obligation may result in one or more of the following. Denial of the application, Closure of the active AG Removal of the individual from the AG, Repayment of Benefits and/or Reduction in Benefits.”

EXB-5 IG-BR-40 letter was mailed to Ms _____ on June 7, 2004 informing her of the date and time of her Fair Hearing. The schedule date was August 10, 2004 at 9:00 a.m.

EXB-6 Pre-Hearing Conference Withdrawal Statement dated 8/10/04 This statement was signed by _____ and Supervisor Addie Fielder. This happened after the Pre-conference hearing was conducted and Ms Fielder explained the reason and policy for the closure.

EXB-7 BVRF Referral was sent by Ms Fielder to the Repayment Unit on August 8, 2004 stating “Benefits reinstated per hearing request. Client claims did not get appt letter but did get closure. Client did not come in for review till 6/1/04 “

EXB-8 ES-FS-5 Food Stamp Claim Determination sheet dated 12/20/04, showing the benefits for two months of April and May 2004, in the amount of \$ 259.00 per month totaling \$518.00 that the client was not eligibly due to not redetermination being done in March 2004.

EXB-9 Chapter 20.2 of the Income Maintenance Manual An Unintentional Program Violation (UPV) claim is established when. An error by the Department results in the over issuance, The client’s benefits are continued pending a Fair Hearing decision and the subsequent decision upholds the Department action, and The Department continued issuance beyond the certification period without completing a redetermination.

IV. RIGHTS AND RESPONSIBILITIES: EVALUATION OF CLIENT'S UNDERSTANDING OF AGENCY POLICY AND RECOMMENDATION

_____ has been receiving benefits for years and she knows that periodically reviews must be completed to continue to receive benefits. Regardless if she did or did not receive the review appointment letter she did receive the closure letter that was mailed on March 16, 2004, notifying her that her case will be closed on March 31, 2004 if a review is not completed. She in return did send in a request for a hair hearing on March 22 and benefits were continued as requested without a review.

Pre-hearing was held on August 8, 2004 with Ms Fielder the Income Maintenance Supervisor and the withdraw request was signed by Ms _____. After she signed the withdrawal, a Food Stamp referral was sent to repayment to collect for the months she received benefits without a redetermination being completed.

I am requesting that the Department uphold the UPV claim for Food Stamps for the amount of \$518.00 that Ms _____ received for April and May of 2004 without a review being completed.

3) Ms. _____ submitted the following Hearing Summary:

As per the conference call hearing, please change my name from _____ to _____, as I am now divorced for one year and was enabled to change my name legally back to _____.

I remember having the hearing with the lady back in August 2004, but I do not remember her name. Was that Mrs. Addie Fielder? Is that why she was also on the conference call 2/8/05? The lady in the meeting did not write down everything, just what she wanted or felt she needed. Everything IS NOT recorded in those meetings. That is why everything that was discussed during that meeting was not brought up during the conference call. As I learned in the conference call, that became a disadvantage to me.

I have dealt with DHHR for years now. I have documented a lack of response to my needs, starting with Susan Cook, my initial caseworker, to Amanda Holland, to Patricia Landers, and then finally Barbara Akor. I have also documented a total void in response to my written letters, and an inability of staff to communicate appropriately. These inadequacies lead up to the 2/8/05 conference and are a pure example of why I should not be punished for something I was totally unaware of. I asked questions of DHHR and based on the answers as well as further instructions, I did what I was told to do.

Just so you understand what kind of person you are dealing with here.... I spent 13 years in the military, half of that as a commissioned officer. I have always had a job in my life, except after returning to West Virginia in August 2001, I have lost a couple jobs due to the economy. I have fallen upon hard times for the first time in my life. I have two college degrees and an equivalent of a third from the military. I have certifications. I am no dummy. I am not trying to play games with you people. I appreciate your role and I am glad you were there when I needed you. I am a victim of inconcise information.

Additionally, I was in the hospital in March 2004 and someone was staying at my house to help with my daughter. They received the mail during my absence. As best as I can figure out, the letter that I never received (the one indicating when my eligibility review was) may have come during that time and simply got tossed out by my visitor or set aside becoming lost. Or, it may never have been sent by DHHR even though it was in the system. Or it may have become lost in the mail. Whatever the scenario, I receive and keep all my DHHR mail. I have a specific file set aside for just such documents. I am not lying about not receiving the document.

Then, when I got the next communication in the mail from DHHR about discontinuing my benefits, I called Barbara Akor several times without response. I sent the document back to DHHR in the mail indicating I never received the letter. Finally, I came in, and Barbara Akor spoke to me momentarily up by the phone at the DHHR office and told me I would have to call back and make another appointment for my eligibility review, which I did, and was given the June date. I came in. I had no way of knowing that because I did not come in until the next time they gave me I would be penalized for April and May. In fact, I never thought about April and May not once. It never crossed my mind. I cannot say that I was ever given a reason to think about it until I got the notice of repayment from Jennifer Butcher. Trust me, if I thought for one moment that I was going to have to repay money, I would never have used the last few hundred dollars given to me and would have let DHHR take the money from there. But no, it's bad enough that I returned to work in September and am trying to recover from near financial disaster and paying off medical bills owed from that time, but now I have to pay back money to DHHR that I should never have had to pay back because of lack of information or inconcise information given to me by DHHR.

I have never missed an appointment with DHHR, WIC or anyone unless I had to reschedule it or something. I am just not that way. I am meticulous about my recordkeeping, appointments, etc. I think requiring me to pay back this money is wrong.

4) Ms. _____ signed a Pre-Hearing Conference Withdrawal Statement on August 10, 2004, after discussing the matter with Mrs. Addie Fielder, Income Maintenance Supervisor.

5) Ms. _____ owes a repayment of \$518.00 in over issued Food Stamp Benefits, for the months of April and May 2004.

VIII. CONCLUSIONS OF LAW:

1) West Virginia Income Maintenance Manual Chapter 1.2 (B) (2) OVERVIEW OF THE ELIGIBILITY DETERMINATION PROCESS states,

Periodic reviews of total eligibility for recipients are mandated by law. These are redeterminations and take place at specific intervals, depending on the Program or coverage group. Failure by the client to keep an appointment for a redetermination usually results in ineligibility. If the client keeps his appointment and continues to be eligible, benefits must be uninterrupted and received at approximately the same time.

The redetermination process involves basically the same activities described in item 1 above. Data system changes and client notification of any changes resulting from the redetermination conclude the process

2) West Virginia Income Maintenance Manual Chapter 20.2 C (1) IDENTIFYING THE MONTH(S) AND AMOUNT FOR WHICH CLAIMS ARE ESTABLISHED - UPV states in part,

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.***
- The client's benefits are continued pending a Fair Hearing decision and the subsequent decision upholds the Department's action.
- It is determined by court action or ADH the client did not commit an IPV. The claim is pursued as a UPV.
- The AG received Food Stamps solely because of Categorical Eligibility, and it is subsequently determined ineligible for WV WORKS and/or SSI at the time they received it.

EXCEPTION: If the client misrepresented circumstances in order to receive cash assistance or SSI, the Food Stamp claim may be an IPV.

- The Department issued duplicate benefits and the overissued amount was not returned.
- ***The Department continued issuance beyond the certification period without completing a redetermination.***

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the proposal of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29