



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

August 8, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 26, 2005. Your hearing request was based on the Department of Health and Human Resources' decision to establish a client unintentional error Food Stamp 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 Food Stamp program is based on current policy and regulations. Some of these regulations state as follows: When an assistance group has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing a claim. Collection action is initiated against the Assistance Group which received the overpayment. All claims, whether established as a result of an error on the part of the Agency or the household, are subject to recoupment. (West Virginia Income Maintenance Manual ' 10.4, C & 20.2)..

The information, which was submitted at your hearing, revealed that your household received an over issuance of Food Stamps during the months of November 2004 thru April 2005.

It is the decision of the State Hearing Officer to uphold the action of the Department to establish a Food Stamp claim of \$1726. and to seek repayment of the claim from you. I further rule that the over payment was due to an agency error and should therefore; be established as an agency error claim.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Crossland, DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

Claimant,

v. Action Number: _____

**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 July 27, 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 July 27, 2005 on a timely appeal, filed May 4, 2005.

It should be noted here that repayment and recoupment have been postponed pending a hearing decision.

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 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:

_____, claimant
_____, claimant's daughter

_____, claimant's son
Karen Crossland, DHHR Repayment Investigator

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in their actions to establish and collect an overpayment of Food Stamps.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy § 1.2, 9.1, and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp Claim Determination
- D-2 West Virginia Income Maintenance Manual Policy § 1.2
- D-3 West Virginia Income Maintenance Manual Policy § 9.1
- D-4 West Virginia Income Maintenance Manual Policy § 20.2
- D-5 Notice of Food Stamp Over issuance dated May 2, 2005

VII. FINDINGS OF FACT:

- 1) Ms. _____ applied for Food Stamp benefits at the WV DHHR office on November 22, 2004. She reported at that time that her two children were residing with her 50% of the time and with their father 50% of the time. She and their father have joint custody.
- 2) Food Stamps were approved effective for November 2005 including the two children as benefit group members.
- 3) A Food Stamp review was completed on March 3, 2005 and Ms. _____ reported that the children were not residing with her over 50% of the time.
- 4) The caseworker obtained information from the Bureau of Child Support Enforcement of a recent court proceeding determining that the children were with their father most of the time and therefore; child support was not ordered for Ms. _____.
- 5) The Food Stamp case was closed in April 2005.
- 6) The children, during the school year, spend six nights of a two-week period with their mother. Six of 14 nights are spend at Ms. _____s. Eight are spent at their father's home. Ms. _____ provides the children with sixteen of forty-two meals during a two-

week period while school is in session. Their father provides for the remainder of their meals including the payment of school lunches.

7) **WV Income Maintenance Manual § 1.2:**

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. The client must be instructed that his failure to fulfill his obligation may result in repayment of benefits.

8) **WV Income Maintenance Manual § 9.1:**

Food Stamp Eligibility Determination groups:

A. The Assistance Group

1. Who Must Be Included:

An individual cannot be a member of more than one Food Stamp benefit group in any month.

Throughout this section, the word customarily is used to mean **over** 50% of meals on a monthly basis. When a Child is eligible for free or reduced-price meals at school, these meals are considered provided by the person with whom the child resides.

9) **WV Income Maintenance Manual § 20.2**

Collection action is initiated against the assistance group which received the over issuance. A claim is established when: An unintentional error made by the client or the agency results in the over issuance.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in Chapter 9.1 that in order for a child to be included in the Food Stamp benefit group, **over** 50% of his meals must be provided by that household. Ms. _____ was providing less than 50% of her children meals and they were spending less than 50% of their nights at her home. At application, Ms. _____ did not report that the children resided with her over 50% of the time however; the Food Stamp application was approved including the two children in the benefit group.
- 2) When an assistance group is issued benefits which it was not entitled to receive, policy 20.2 stipulates that collection action be taken against the assistance group who received the benefits.

IX. DECISION:

I find that the claimant was over issued Food Stamp benefits during the months of November 2004 thru April 2005. I rule to **uphold** the agency in its actions to establish a Food Stamp claim for \$1276. and to collect the overpayment from the claimant. I further rule that the claim was a result of an Agency Error and that the claim be established as an Agency Error claim.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of August 2005.

Sharon K. Yoho
State Hearing Officer