



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**Board of Review**  
**P. O. Box 2590**  
**Fairmont, WV 26555-2590**

**Joe Manchin III**  
**Governor**

**Martha Yeager Walker**  
**Secretary**

December 19, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 9, 2005. Your hearing request was based on the Department of Health and Human Resources' decision to establish a 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 that when an assistance group has been issued more Food Stamps 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 Agency or the household, are subject to repayment. (West Virginia Income Maintenance Manual ' 10.4, C & 20.2).

The information submitted at your hearing fails to demonstrate that the income withheld from your Social Security entitlement should have counted when determining Food Stamp eligibility and benefit amount. As a result, there is insufficient evidence to show that the repayment amount proposed by the Department is correct.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency to establish and seek collection of a Food Stamp claim in the amount of \$871 for the period February 2005 through July 2005.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Teresa Smith, SRI, DHHR



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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 05-BOR-6569**

**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 December 19, 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 November 9, 2005 on a timely appeal filed September 1, 2005.

**II. PROGRAM PURPOSE:**

The program entitled **Food Stamps** is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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  
\_\_\_\_\_, Claimant's daughter  
Teresa Smith, SRI, DHHR

Presiding at the Hearing was Thomas E. Arnett, 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 Agency was correct in their proposal to establish and seek repayment of a Food Stamp claim.

#### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual ' 1.2, 1.4, 10.3 & 20.2.  
7 CFR ' 273.18 - Code of Federal Regulations.

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- DHS-1 Case Comments dated 7/18/05 & 7/19/05
- DHS-2 Food Stamp Allotment Determination for February 2005
- DHS-3 Food Stamp Allotment Determination for March 2005 through July 2005
- DHS-4 Verified Unearned Income for \_\_\_\_\_ and \_\_\_\_\_.
- DHS-5 WVIMM, Chapter 10, Appendix A (for February and March 2005) and the new income limits, Chapter 10, Appendix A effective April 2005
- DHS-6 Food Stamp Claim Determination for February 2005 through July 2005
- DHS-7 WVIMM Chapter 1.2, 1.4, 10.3, & 20.2
- DHS-8 Notification of FS Overissuance

#### **VII. FINDINGS OF FACT:**

- 1) On August 18, 2005, a Notification of Overissuance (DHS-8) was sent to the Claimant which advises the following:

We have determined that you were issued more Food Stamp benefits than you were eligible to receive during the period 2/1/05 to 7/31/05, because of  
**UNEARNED INCOME.**

- 2) Testimony received from the Department indicates that a Food Stamp review was completed on the Claimant's Food Stamp case on July 18, 2005. The review resulted in a finding that the assistance group's (AG's) net income was in excess of the maximum allowable income for an AG of two (2).
- 3) Evidence submitted on exhibit DHS-4 reveals that the AG's gross monthly unearned income increased to \$1371 in February 2005 (\_\_\_\_\_ \$1003 and \_\_\_\_\_ \$368). The AG's increase in income was not reported by the Claimant at the time of onset, however, the Department is not alleging fraudulent intent, only repayment of benefits for which the AG was not eligible during the period February 2005 through July 2005.



- 4) Exhibit DHS-2 & DHS-3 reveal that after appropriate deductions and disregards are applied to the AG's unearned income, the remaining monthly "net" income is \$1237.
- 5) West Virginia Income Maintenance Manual, Chapter 10, Appendix A (DHS-5) reveals that the maximum monthly "net" income limit for an AG of 2 is \$1041.
- 6) The Department submitted exhibit DHS-6 to show that the AG received Food Stamp benefits in the amount of \$871 during the period February 2005 through July 2005 for which they were not eligible.
- 7) Testimony provided by the Claimant reveals that his wife has not been receiving her full entitlement of \$368 per month because Social Security is withholding some of her money to recoup an overpayment. The Department contends that the full amount of entitlement is counted regardless if there is money being withheld to satisfy an overpayment.
- 8) West Virginia Income Maintenance Manual ' 1.2(E) states that it is the client's responsibility to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.
- 9) West Virginia Income Maintenance Manual ' 10.3 reveals that RSDI (Retirement, Survivors, Disability Insurance (the Claimants Social Security benefits) counts as unearned income for the Food Stamp Program.
- 10) West Virginia Income Maintenance Manual ' 10.4, C:  
This section contains policy relating income disregards and deductions and computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and number (of persons) in the benefit group. This section of policy goes on to say - When at least one AG member is elderly or disabled as specified in Section 12.15,B, eligibility is determined by comparing the countable income to the maximum net monthly income found in Appendix A. There is no gross income test.
- 11) West Virginia Income Maintenance Manual ' 10.4, D,12,b (withheld income from unearned income):

Treatment of unearned income depends on the reason it is being withheld and the government program, if any, involved. When a client's benefits under a federal or State means-tested program are reduced, due to the client's intentional misrepresentation, the amount being recouped from current benefits is counted as income. Means-tested programs include, but are not limited to, WV WORKS, SSI, HUD and PELL. Any other recoupment is not counted. [Emphasis added]

When intentional misrepresentation cannot be documented by the means-tested program, the income is not counted. [Emphasis added]



- 12) West Virginia Income Maintenance Manual ' 20.2:  
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.
- 13) West Virginia Income Maintenance Manual ' 20.2,C:  
There are 2 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

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy states that the Food Stamp benefit amount is determined by the countable income and the number (of persons) in the benefit group.
- 2) The Department counted the AG's full Social Security entitlement to determine Food Stamp eligibility for the period in question, however, testimony received from the Claimant indicates that his wife has not received her full Social Security entitlement since the new amount was established in February 2005.
- 3) Policy found in the West Virginia Income Maintenance Manual states that the only recoupments (repayments) that continue to count as income for the Food Stamp Program are those resulting from a means-tested program that are due to the clients intentional misrepresentation. No other recoupment is counted as income.
- 4) The Department's evidence fails to demonstrate that the amount of Social Security benefits being withheld from the Claimant's income is the result of an intentional client misrepresentation from a means-tested program. While the Claimant's income clearly increased, there is insufficient evidence to show that the repayment amount proposed by the Department is correct. Subsequent repayment claims for this period (February 2005 through July 2005) must take into account the actual amount of Social Security benefits received during the period or prove that the withheld income is due to the client's intentional misrepresentation in a means-tested program.

### **IX. DECISION:**

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **reverse** the Agency=s proposal to establish and seek repayment of an \$871 Food Stamp claim against the Assistance Group for the period February 1, 2005 through July 31, 2005.



**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 19th Day of December, 2005.**

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**Thomas E. Arnett  
State Hearing Officer**