



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 27, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 16, 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 revealed that your household income in August 2005 exceeded the maximum monthly net income limit for an assistance group of three (3). As a result, you received \$393 in Food Stamp benefits for which you were not eligible.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to establish and seek collection of a Food Stamp claim in the amount of \$393 for the period August 1, 2005 through August 31, 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-6743

**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 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 November 16, 2005 on a timely appeal filed September 30, 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
_____, Co-Claimant
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 in the amount of \$393 for the period August 1, 2005 through August 31, 2005.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual ' 1.2, 1.4, 10.3, 10.4 & 20.2.
7 CFR ' 273.18 - Code of Federal Regulations.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 DFA-RR1, Rights and Responsibilities
- DHS-2 Notice of Decision dated 5/2/05
- DHS-3 Case Comments for period 5/16/05 – 8/30/05
- DHS-4 Verification Checklist dated 5/17/05
- DHS-5 Income verification for _____ (6/24/05)
- DHS-6 Employment Data / Wage History for _____ completed on 9/19/05 by _____

- DHS-7 WVIMM Chapter 10, appendix A (income limits)
- DHS-8 ES-FS-5, Food Stamp Claim Determination for August 2005
- DHS-9 Notification of FS Overissuance dated 9/27/05.
- DHS-10 WVIMM 1.2, 1.4, 10.3 & 20.2

VII. FINDINGS OF FACT:

- 1) On September 27, 2005, a Notification of FS Overissuance (DHS-9) was sent to the Claimants. This notice states, in pertinent part:

We have determined that you were issued more Food Stamp benefits than you were eligible to receive during the period 8/1/05 to 8/31/05, because of wages /salaries – unreported /incorrect.

- 2) The Claimant completed an application for WV WORKS benefits on March 25, 2005 and on May 2, 2005, the Department sent the Claimants a Notice of Decision "Important changes about your Food Stamp benefits." This notice advises the Claimants that the only change they are required to report for Food Stamp benefits is if their family's gross income increases to more than \$1698 per month.

- 3) On May 16, 2005, Mr. _____ reported that he would be starting a job the following week (see exhibit DHS-3, case comments on 5/16/05). On May 17, 2005, Mr. _____ contacted his Worker again and requested that his WV WORKS case be closed as he indicated that he will be making \$22 per hour (see DHS-3, case comments on 5/17/05).
- 4) The Department issued a Verification Checklist to the Claimants on May 17, 2005 (DHS-4) requesting proof of gross earned income for _____. This notice goes on to say – “If this information is not made available to this office by 5/26/05 your eligibility for benefits and/or deductions cannot be established or continued.”
- 5) The Department contends that the Worker received income verification (DHS-5) from the Claimants on June 28, 2005 but failed to review the Claimants’ case at that time. The Worker, according to the Department, thought the case was closed when the Claimants did not respond to the Verification Checklist (DHS-4) within the allotted time. It was only after the Worker received an alert on August 17, 2005 that a Food Stamp review needed to be completed on the Claimants’ case that the overpayment was found.
- 6) Because the Claimants household income did not exceed the \$1698 amount (130% of FPL) until late June 2005 (verified in DHS-6), the Department conceded that simplified reporting requirements would have allowed the Claimants until July 10, 2005 to report the change in income. The Department indicated that this is why the repayment is proposed for the month of August 2005 only.
- 7) Exhibit DHS-8 reveals that the Department is proposing repayment in the amount of \$393 for the month of August 2005. Income calculations used to determine the eligibility reveal that the Claimants’ gross monthly income for August 2005 was \$1545. After all of the income disregards and deductions are applied, a countable monthly income (net income) of \$1401 remains.
- 8) Department’s exhibit DHS-7 reveals that the maximum countable income (net income) for an AG of three (3) is \$1306.
- 9) The Department submitted exhibit DHS-1, the DFA-RR1 - Rights and Responsibilities, and cited section #7 on page 2 which states – I understand I will have to repay any Food Stamp benefits issued to me for which I was not eligible when the reason I received the incorrect benefits was because of an unintentional error made by me or by WVDHHR.
- 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.

- 11) 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.
- 12) 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 provides that when an AG receives more Food Stamps than it was entitled to receive, corrective action is taken by establishing an Unintentional Program Violation (UPV) or Intentional Program Violation (IPV) claim.
- 2) The Department is ultimately responsibility for the \$393 Food Stamp benefit overpayment because the Claimants' case should have been closed by the Worker when the requested income verification was not received on or before May 26, 2005. The Food Stamp Claim is therefore the result of an Agency error.
- 3) The Department, however, has correctly proposed repayment as policy makes no distinction between claims resulting from errors made by the Claimant or the Agency - The claim is the difference between the entitlement the assistance group received and the entitlement the assistance group should have received.

IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **uphold** the Agency's proposal to establish and seek repayment of a \$393 Food Stamp claim against the Assistance Group for the period August 1, 2005 through August 31, 2005.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of December, 2005.

**Thomas E. Arnett
State Hearing Officer**