



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 2, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 11, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to seek a repayment of over issued Food Stamp benefits.

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 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 entitlement of the AG and the coupon allotment the AG was entitled to receive.

NOTE: Referrals are made for all over issuances, 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 written, the error is discovered as the result of a QA 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). (West Virginia Income Maintenance Manual Section 20.2 FOOD STAMP CLAIMS AND REPAYMENT PROCEDURES).

The information submitted at your hearing revealed: You were over issued Food Stamp benefits in the amount of \$1,066.00 as a result of an Agency Error.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to seek a repayment.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Mrs. Jennifer Butcher, Repayment Investigator

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

_____,
Claimant,

v.

Action Number: 06-BOR-1437

**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 August 2, 2006 for Ms. _____. 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 April 11, 2006 on a timely appeal filed March 21, 2006.

It should be noted here that the Claimant was receiving Food Stamp and West Virginia Works Benefits at the time of the hearing. A pre-hearing conference was held between the parties, and Ms. _____ did not have legal representation.

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
Jennifer Butcher, Repayment Investigator

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:

The question(s) to be decided: Is Ms. _____ required to repay over issued Food Stamp benefits as a result of an Agency Error?

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 20.2 FOOD STAMP CLAIMS AND REPAYMENT PROCEDURES; and 7CFR 273.18 Claims against households.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

Exhibit -1 Benefit Recovery Referral dated 12/01/05
Exhibit -2 Rights and Responsibilities dated 12/20/04
Exhibit -3 7CFR 273.18 Claims against households
Exhibit -4 Miscellaneous Hearing Exhibits

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1. On March 9, 2006 a claim in the amount of \$1,066.00 was established for the period covering May 2005 to December 2005. The reason for the claim being written was Social Security Survivor Benefits were not being counted against the Food Stamps as unearned income. Ms _____ reported this information and the changes were not made to the on going case. This resulted in an over issuance of Food Stamp benefits in which Ms _____ was not entitled to receive (Exhibit 1).

2. Ms. _____ signed the Rights and Responsibilities document on December 20, 2004 when applying for Food Stamp benefits. According to the Rights and Responsibilities statement # 7 reads "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 WV DHHR."

Also, statement #47 reads "I certify that all statements on this form have been read by me or read to me and that I understand them. I certify that all the information I have given is true and correct and I accept the responsibilities." (Exhibit 2).

3. The collection of this claim comes under the guidelines of the Code of Federal Regulations of the United States Department of Agriculture. Under Title 7 Chapter II Part 273.18 Claims against households, it states in part:

(a) (1) A recipient claim is an amount owed because of benefits that were overpaid. (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.

An agency claim is defined as any claim for an overpayment caused by an action or failure to take action by the state agency (Exhibit 3).

4. West Virginia Income Maintenance Manual Section 20.2 FOOD STAMP CLAIMS AND REPAYMENT PROCEDURES 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 entitlement of the AG and the coupon allotment the AG was entitled to receive.

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5. The Department's proposal to collect the over payment of Food Stamp benefits is proper and correct.

VIII. CONCLUSIONS OF LAW:

1. Title 7 Chapter II Part 273.18 Claims against households states in part:

(a) (1) A recipient claim is an amount owed because of benefits that were overpaid. (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.

2. West Virginia Income Maintenance Manual Section 20.2 FOOD STAMP CLAIMS AND REPAYMENT PROCEDURES 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 entitlement of the AG and the coupon allotment the AG was entitled to receive.

NOTE: Referrals are made for all over issuances, 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 written, the error is discovered as the result of a QA 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).

3. Ms _____ reported her unearned income, and the Department failed to make the necessary changes to the on going case. This resulted in an over issuance of Food Stamp Benefits in the amount of \$1,066.00.

4. Ms. _____ must repay the over issued Food Stamp benefits.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd Day of August, 2006.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer