



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 11, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 10, 2006. Your hearing request was based on the Department of Health and Human Resources' action to establish a Food Stamp overissuance claim based on client error and to require repayment.

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 the 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 or Intentional Program Violation claim (WV Income Maintenance Manual Section 20.2) and the decision related to the claim is subject to a Fair Hearing (7 CFR 273.18).

The information which was submitted at your hearing revealed that a Food Stamp overissuance occurred in the amount of \$244 during the period of December, 2005 and the overissuance was correctly established as a client error claim and must be repaid.

It is the decision of the State Hearings Officer to uphold the action of the Department to establish a Food Stamp overissuance claim based on client error and to require repayment.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Todd Thornton, Repayment Investigator

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

_____,
Claimant,

v.

Action Number: 06-BOR-2226

**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 10, 2006 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 August 10, 2006 on a timely appeal, filed May 2, 2006. It should be noted that the hearing was originally scheduled for July 11, 2006 but was rescheduled at Department's request. It should also be noted here that repayment of benefits is pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Food Stamp Program 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:

1. _____, Claimant.
2. Todd Thornton, Repayment Investigator.

Presiding at the Hearing was Thomas M. Smith, 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 Department took the correct action to establish a Food Stamp overissuance claim in the amount of \$244 for the month of December, 2005 based on client error and to require repayment.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 10.3, 10.4, 20.2.
Federal Food Stamp Regulations Sections 273.18.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1 Copy of ES-FS 5.
DHS-2 Copy of IQFS Screen Print.
DHS-3 Copy of EFAD Screen Print.
DHS-4 Copy of EFGT Screen Print.
DHS-5 Copy of AFEI Screen Print.
DHS-6 Copy of pay stub dated 11-10-06.
DHS-7 Copy of notification letter dated 2-14-06 (2 pages).

VII. FINDINGS OF FACT:

- 1) The claimant received Food Stamps for the month of December, 2005 in the amount of \$244 which was determined as an overissuance as she had started a new job on 10-24-05 and the income from the job was not considered for eligibility for Food Stamps for December, 2005.
- 2) The claimant received her first pay check from her new job on 11-10-05 (Exhibit #DHS-6) and the monthly countable income for the month of December, 2005 (\$1928.55) was determined to exceed the monthly income limit for Food Stamps (\$1744) for a three (3) person assistance group (AG) (Exhibit #DHS-4).
- 3) Notification of the Food Stamp overissuance was mailed on 2-14-06 (Exhibit #DHS-7) and the Food Stamp overissuance was determined as a client error as the claimant did not report her earned income within ten (10) days of the beginning of employment.
- 4) The claimant requested a hearing on 5-2-06 via a telephone message to the State Hearing Officer.

- 5) The claimant testified that she started her new job on 10-24-05 and sent in her pay stub when she got her first check around the middle of November, 2005, that she received a letter in mid-November, 2005 stating that her case would be closed, that her Food Stamp card in December, 2005 contained the \$244 and she thought she was eligible for the Food Stamps in December, 2005, that she was following policy and procedures, and that she understands she may have to pay back the Food Stamps but does not agree that it should be considered a client error.
- 6) Mr. Thornton testified that the claimant should have reported her earnings from the new job within ten (10) days of starting the job and that the caseworker would have anticipated her income and determined that she was not eligible for December, 2005.
- 7) WV Income Maintenance Manual Section 20.1 states, in part:

"The Department is responsible for accurately determining the client's eligibility for Food Stamps, cash assistance (AFDC/U, TANF, and WV WORKS) and Medicaid. When it is discovered that excess benefits have been issued, corrective action must be taken."

- 8) WV Income Maintenance Manual Section 20.2 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 allotment received by the AG and the coupon allotment the AG was entitled to receive....."

NOTE: Referrals are made for all overissuances, 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 referred, the error is discovered as the result of a QZ 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). See Section 20.2 E for definition of who is a liable debtor.....

C. IDENTIFYING THE MONTH(S) AND AMOUNT FOR WHICH CLAIMS ARE ESTABLISHED

The number of month(s) for which claims are established depend on whether it is an IPV or UPV.....

Claims are not established for excess benefits received solely due to the 13-day advance notice period.

1. UPV Claims

There are two 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.

NOTE: Items a and b below are used when the overissuance is not contested in a Fair Hearing. If a Fair Hearing is held, the Hearings Officer's decision is final.

A client error UPV is only established retroactively for the 6-year period preceding the month of discovery. An Agency error is only established retroactively for the one-year period preceding the date of the claim.

The Repayment Investigator determines the month in which the overissuance initially occurred as follows:

a. Agency Errors

(1) Failure to Take Prompt Action

The first month of overissuance is the month the change would have been effective had the agency acted promptly.....

b. Client Errors

When the client fails to provide accurate or complete information, the first month of the overissuance is the month the incorrect, incomplete, or unreported information would have affected the benefit level considering noticing and reporting requirements.

NOTE: When determining the amount of overissuance due to the failure of the household to report earned income in a timely manner, the amount of the benefits the client should have received is computed without applying the earned income disregard to any portion of the income the client did not report. This applies to IPV claims for benefits issued for October, 1987 and later and to UPV claims established on or after November 1, 1996.....

2. IPV Claims

IPV's include making false or misleading statements, misrepresentations, the concealing or withholding of facts, and committing any act that violates the Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.....

An IPV can only be established in the following ways:

- The client signs an IG-BR-44, Waiver of Rights to ADH.....

D. FACTORS AFFECTING THE AMOUNT OF THE CLAIM

There are no special factors affecting the amount of the Food Stamp claim.

E. COLLECTING THE CLAIM

Collection action is initiated against the AG which received the overissuance. When the AG composition changes, collection is pursued against any and all AG's which include a liable debtor.....

2. Claim Notification

a. UPV Claims

The AG is notified of the Food Stamp claim by computer-generated notification/demand payment letters from RAPIDS. Enclosed with the letter is a repayment agreement, form ES-REPAY-1 and a postage-paid envelope.....

3. Collecting Procedures

a. Offsetting Lost Benefits

A claim, whether UPV or IPV, must be collected by offsetting when lost benefits are owed to the AG, but have not yet been restored.....

b. Treasury Offset Program (TOP)

All IPV and client UPV claims are subject to collection through the Treasury Offset Program (TOP). Claims which have a payment balance of at least \$25 are delinquent and are not over 10 years old, are subject to referral for collection of the claim by offset of the client's federal income tax refund and any federal benefits/payments. Agency caused UPV claims, established on or after 11-1-96, are eligible for Treasury Offset Program collection under the condition described above. Judgment claims are not subject to the 10-year limitation.....

F. DETERMINING THE REPAYMENT AMOUNT

The minimum amount of repayment is determined as follows:

1. UPV Client and Agency errors

(a) Current Recipients

The current coupon entitlement is reduced by 10% or \$10, whichever is greater.

(b) Former Recipients

Form ES-REPAY-1 offers the liable debtor the following options for repayment.

(1) Lump Sum Payment

One payment is made to pay the claim in its entirety.

(2) Installment Payments

When the AG is financially unable to pay the claim in one lump sum, regular monthly installment payments are accepted. The minimum amount of the monthly payment is \$50. If the CI/RI determines that the AG cannot afford the minimum payment, the payment amount is negotiated on a case-by-case basis.....

G. RIGHT TO A FAIR HEARING

The client has 90 days from the date of the initial notification/demand payment letter in which to request a Fair Hearing. The Hearings Officer only rules on the type and amount of the claim."

- 9) Federal Food Stamp regulations contained in 7 CFR 273.18 state, in part:

"Claims against households.

(a) General. (1) A recipient claim is an amount owed because of:

- (i) Benefits are overpaid or
- (ii) Benefits are trafficked....

(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.....

(b) Types of claims. There are three types of claims:

- (1) Intentional Program Violation (IPV) claim.....
- (2) Inadvertent household error (IHE) claim.....

(3) Agency error (AE) claim. Any claim for an overpayment caused by an action or failure to take action by the State agency.....

(c) Calculating the claim amount.....

(3) Notification of the claim. (i) Each State Agency must develop and mail or otherwise deliver to the household written notification to begin collection action on any claim.....

(iii) If the claim or the amount of the claim was not established at a hearing, the State agency must provide the household with a one-time notice of adverse action. The notice of adverse action may either be sent separately or as part of the demand letter.

(iv) The initial demand letter or notice of adverse action must include language stating:

(A) The amount of the claim.....

(I) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim, The household will have 90 days to request a hearing."

VIII. CONCLUSIONS OF LAW:

- 1) WV Income Maintenance Manual Section 20.1 states that the Department is responsible for accurately determining the client's eligibility for Food Stamps and that when it is discovered that excess benefits have been issued, corrective action must be taken. The Department was correct to determine that the claimant received an excessive amount of Food Stamps in the month of December, 2005 in the amount of \$244.
- 2) WV Income Maintenance Manual Section 20.2 states that 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 or Intentional Program Violation. That same section states that if the amount of the overissuance is due to the failure of the household to report earned income in a timely manner, the amount of benefits the client should have received is computed without applying the earned income disregard to any portion of the earnings the client did not report. While the claimant testified that she reported the earnings after she received her first pay check, Mr. Thornton testified that the earnings should have been reported within ten (10) days of the claimant starting the job. The State Hearing Officer finds that the Department has correctly determined the overissuance of \$244 for the period of December, 2005 and has correctly established the overissuance claim as a client error claim.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to establish a Food Stamp overissuance claim of \$244 for the month of December, 2005 and to determine that the claim was due to client error. It is also the decision of the State Hearing Officer that the Department took the correct action to require repayment of the Food Stamp overissuance claim of \$244 for the period of December, 2005.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 11th Day of August, 2006.

**Thomas M. Smith
State Hearing Officer**