



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

February 28, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 24, 2006. Your hearing request was based on the Department of Health and Human Resources' action to establish a Food Stamp overissuance claim of \$414 for the period of November, 2004 through April, 2005 and to require repayment of the claim.

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 due to Agency error occurred in the amount of \$414 during the period of November, 2004 through April, 2005 and the overissuance 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 in the amount of \$414 for the period of November, 2004 through April, 2005 and to require repayment of the claim.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

_____,

Claimant,

v.

Action Number: 05-BOR-6937

**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 February 24, 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 by telephone conference on February 24, 2006 on a timely appeal filed November 10, 2005. It should be noted that the hearing was originally scheduled for January 5, January 19, and January 24, 2006 but was rescheduled each time at claimant's request. It should also be noted that the claimant's second request for reschedule was to have the hearing conducted by telephone conference.

It should also be noted here that repayment of benefits has been 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 (participating by speaker phone).
2. Brian Shreve, Repayment Investigator (participating by speaker phone).
3. Cynthia Spencer, Family Support Specialist (participating by speaker phone).
4. Mary Cavendish, Economic Service Worker (participating by speaker phone).

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 \$414 for the period of November, 2004 through April, 2005 and to require repayment of such claim.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 10.3, 10.4, 20.2.
Federal Food Stamp Regulations Sections 273.9, 273.10, 273.18.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- A Copy of case comments 10-6-05 (2 pages).
- B Copy of medical expense printout (2 pages).
- C Copy of Food Stamp allotment determination printout (3 pages).
- D Copy of benefit recovery referral 8-3-05.
- E Copy of case comments 2-17-05.
- F Copy of Food Stamp allotment determination.
- G Copy of WV Income Maintenance Manual Section 10.4 (8 pages).
- H Copy of Food Stamp Claim Determination (10 pages).
- I Copy of WV Income Maintenance Manual Section 20.2 (6 pages).
- J Copy of notification letter dated 10-21-05 (2 pages).

Claimant's Exhibits:

- Cl-1 Copy of claimant's written statement (2 pages).

VII. FINDINGS OF FACT:

- 1) The Department entered evidence marked as Exhibit #A through #J into the record and the claimant testified that she had received a copy of the evidence marked Exhibit #A through #J.
- 2) The claimant entered page 1 of her evidence which was received on February 23, 2006 by fax (marked Exhibit #CI-1) and the claimant agreed to provide the second page of her written argument and another document to the State Hearing Officer by fax later on the day the hearing was convened and Mr. Shreve agreed to accept a copy sent by the State Hearing Officer without an opportunity to respond and both parties agreed that the hearing be convened and adjourned with the additional documents to be provided later by the claimant.
- 3) The State Hearing Officer received a fax from the claimant on February 24, 2006 which included page 1 and page 2 of her written statement but no other document was received. A copy of both pages of claimant's Exhibit #CI-1 were faxed to Mr. Shreve the same day.
- 4) The claimant was an active recipient of Food Stamps when she was approved for a medical card in October, 2004.
- 5) The claimant was receiving a medical deduction of \$147.30 per month which reduced her Food Stamp income and the claimant continued to receive the medical deduction from November, 2004 through April, 2005, causing a Food Stamp overissuance of \$414 for that period as she was not eligible for a medical expense deduction (Exhibit #H).
- 6) The claimant was eligible only for \$23.74 in medical expenses to be applied toward a medical expense deduction and regulations allow only the amount in excess of \$35 to be deducted from the Food Stamp income.
- 7) The claimant was notified of the establishment of a Food Stamp overissuance claim due to agency error on 10-21-05 (Exhibit #J) and a hearing request was received on 11-10-05.
- 8) The overissuance claim was established as an agency error claim.
- 9) The claimant objected to testimony from Mr. Shreve that she did not have any countable medical expenses during the period of November, 2004 through April, 2005 and Mr. Shreve called the two (2) caseworkers involved in the claimant's case to testify.
- 10) Ms. Spencer testified that the claimant had some prescription expenses during the period in question but did not have more than \$35 but that she was not the worker involved during the overissuance period.
- 11) Ms. Cavendish testified that she was the worker involved during the period in question and that there was nothing in the record to show that the claimant had any countable

doctor or medical bills which could be used to meet a medical deduction and that only prescription expenses were verified which did not equate to \$35 per month. Ms. Cavendish testified that a hearing decision was issued in August, 2005 which upheld the Department's determination that there were not sufficient medical expenses for a medical deduction to be allowed.

- 12) Ms. _____ testified that she was paying monthly on medical bills to Dr. _____ (\$50), Dr. _____ (\$35-50), and Dr. _____ (\$40-65) and that she had provided the bills to Ms. Cavendish.
- 13) Ms. _____ testified that she wished for her written statement to be entered into the record and considered without a reading of the statement into the record and her request was granted by the State Hearing Officer.
- 14) Ms. _____'s written statement basically argued that she was not to blame for the mistake which caused the Food Stamp overissuance and that she should not have to repay the overissuance because of someone else's mistake.
- 15) 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."
- 16) 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."

17) 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."

- 18) The areas of dispute include whether the case record contained any documents showing that the claimant had medical expenses not covered by Medicaid which were verified during the period of the overissuance (November, 2004 through April, 2005) and whether the claimant is required to repay a Food Stamp overissuance caused by an agency error. The State Hearing Officer finds that there is no evidence that the case record contains any countable medical expenses for which a medical deduction could be allowed for the claimant. The claimant testified that she provided copies of medical bills from three (3) doctors to Ms. Cavendish but Ms. Cavendish testified that no such medical bills were contained in the case record. Absent any evidence of such medical bills, the State Hearing Officer must find that the claimant did not have any allowable medical expenses which exceeded \$35 which were verified during the overissuance period. In regard to the question of whether the claimant must repay an overissuance caused by agency error, the regulations contained in WV Income Maintenance Manual Section 20.2 (listed in Finding of Fact #16) require that all overissuances must be repaid, regardless of who caused the error. Federal Regulations in CFR 7 273.18 (listed in Findings of Fact #17) also require that Food Stamp overissuances be repaid regardless of who caused the error.

VIII. CONCLUSIONS OF LAW:

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. 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. In this case, an Unintentional Program Violation was established due to agency error but regulations still require that the overissuance be repaid. In addition, Federal Food Stamp Regulations in 7 CFR 273.18 require that agency error claims be repaid. Thus, regardless of who caused the error which resulted in a Food Stamp overissuance, an overissuance claim would have to be established and repayment is required. The Department has correctly determined the overissuance of \$414 for the period of November, 2004 through April, 2005 due to agency error and that the overissuance must be repaid.

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 in the amount of \$414 for the period of November, 2004 through April, 2005 and to require repayment of the claim.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of February, 2006.

**Thomas M. Smith
State Hearing Officer**