



**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

March 30, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 2, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to establish and seek collection of 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 evidence submitted at your hearing fails to demonstrate that you received Food Stamp benefits for which you were not eligible during the period of the proposed repayment claims.

It is the decision of the State Hearing Officer to **reverse** the Agency=s proposal to establish and seek repayment of Food Stamp Claims against the Assistance Group for the periods July 27, 2004 through December 31, 2004 (\$1822) and January 25, 2005 through June 30, 2005 (\$2012).

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Marshall Daniels, SRI Supervisor, DHHR

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

_____,

Claimant,

v.

Action Number: 05-BOR-6985

**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 March 30, 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 March 2, 2006 on a timely appeal filed November 21, 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 wife
Marshall Daniels, 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 is correct in their proposal to establish and seek repayment of a Food Stamp Claim for the period July 27, 2004 through June 2005

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual ' 9.1, 10.4 & 20.2.
7 CFR ' 273.18 - Code of Federal Regulations.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 Benefit Recovery Referral for period 7/27/04 to 12/31/04 (referral date 8/19/05)
- DHS-2 Benefit Recovery Referral for period 1/25/05 to 6/30/05 (referral date 9/21/05)
- DHS-3 WVIMM 9.1
- DHS-4 Court Ordered Parenting Agreement from the Circuit Court of [REDACTED] County, West Virginia, Civil Action No. 01-D-758.
- DHS-5 Food Stamp Claim Determination for the period 7/04 thru 12/04
- DHS-6 Food Stamp Claim Determination for the period 1/05 thru 6/05
- DHS-7 Notification of FS Overissuance dated 11/17/05 (for the period 7/27/04 to 12/31/04)
- DHS-8 Notification of FS Overissuance dated 11/17/05 (for the period 1/25/05 to 6/30/05)
- DHS-9 WVIMM, Chapter 20.2 (Food Stamp Claims and Repayment Procedures)

VII. FINDINGS OF FACT:

- 1) On November 11, 2005, the Claimant was notified via two individual Notification of FS Overissuance letters (DHS-7 & DHS-8) that the Department was seeking repayment of Food Stamp benefits that were reportedly sent to the Claimant in error.

Department's exhibit DHS-7 indicates that the Claimant was sent \$1822 in Food Stamps during the period July 27, 2004 thru December 31, 2004, and DHS-8 notifies the Claimant that he received \$2012 during the period January 25, 2005 to June 30, 2005. Both of the overissuances are based on a Budget Group error made by the Client. The total amount of repayment proposed by the Department is \$3834

- 2) The Department submitted calculations contained in exhibits DHS-5 & DHS-6, Food Stamp Claim Determination(s), to show how the proposed repayment amount was determined. Exhibit DHS-5 shows a loss to the Food Stamp Program in the amount of \$1822 during the period July 2004 through December 2004 and Exhibit DHS-6 shows a loss to the Food Stamp Program of \$2012 during the period January 2005 through June 2005. Both of these claims are based on the Department's contention that four (4) individuals should not have been included in the AG during the period in question.

- 3) The Claimant has four children from his previous marriage, and he and his former spouse share custody their children. The Department contends that the Parenting Agreement (DHS-4) identifies the children's mother as the primary custodian, and for this reason, the Claimant was not eligible to receive Food Stamp benefits during the period for which repayment is proposed. Page 2 of the Parenting Agreement, Designation As Custodian, states – "The children named in this parenting plan are scheduled to reside the majority of the time with the Mother. This parent is designated the custodian of the children solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan."

It should be noted that while both parents have signed the Parenting Agreement, the copy entered into evidence for this hearing is not an order as it has not been signed by the Family Court Judge.

- 4) The Claimant contends that the Parenting Agreement (DHS-4) is loosely followed by him and his former spouse and it can change depending on school schedules. He stated that he actually has joint custody of the children and that he receives child support from her based on an action that occurred subsequent to the Parenting Agreement. He testified that he does not return the children to their mother on Tuesday and Wednesday morning at 6:30 a.m. as indicated in the Parenting Agreement and for this reason he should be given credit for providing breakfast during the school schedule and providing breakfast and lunch during the non-school schedule on Tuesdays and Wednesdays.
- 5) The Department's Repayment Investigator indicated that they have considered the Claimant's argument and calculated the number of meals for which both parents would be responsible each month. The calculations are based on the Residential Schedule found on page 2 of the Parenting Agreement (DHS-4) and are based on an 84-meal month. The Department contends that 64 meals would be provided by their mother and 20 meals would be provided by the Claimant. The Department contends that this evidence further supports the proposed Repayment Claims.
- 6) The Claimant testified that he is responsible for the following meals on a weekly basis (3-meals per day, 21-meals per week). Meals received at school will not be credited to either party as the determination was not made if the children qualify for free or reduced lunch or who pays for each meal. Every other weekend (Saturday & Sunday) will count as 3 meals per week (average) for each parent.

Claimant School schedule – 11 meals per week

Monday – dinner (1)

Tuesday – breakfast, (lunch at school) & dinner (2)

Wednesday - breakfast, (lunch at school) & dinner (2)

Thursday – breakfast, (lunch at school) & dinner (2)

Friday - breakfast (1)

An average of 3 meals per week is added for every other weekend.

Children's mother, school schedule– 5 meals per week

Monday - breakfast (1)

Friday - dinner (1)

An average of 3 meals per week is added for every other weekend.

Claimant non-school schedule – 16 meals per week

Monday - lunch & dinner (2)

Tuesday - breakfast, lunch & dinner (3)

Wednesday - breakfast, lunch & dinner (3)

Thursday - breakfast, lunch & dinner (3)

Friday - breakfast & lunch (2)

An average of 3 meals per week is added for every other weekend.

Children's mother non-school schedule - 5

Monday - breakfast (1)

Friday - dinner (1)

*An average of 3 meals per week is added for every other weekend.

- 7) Policy found in the West Virginia Income Maintenance Manual ' 9.1.A.1 identifies who must be included in the Assistance Group (AG). This policy states that the word customarily is used to mean over 50% of meals on a monthly basis (individuals who eat 50% of their meals together must be included in the same AG). When a child is eligible for free or reduced price meals at school, these meals are considered provided by the person with whom the child resides.
- 8) 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.
- 9) 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 there has been an overissuance of Food Stamp benefits, corrective is taken by establish either an Unintentional Program Violation (UPV) or an Intentional Program Violation (IPV).

- 2) There are two types of UPV's - an error by the Department, or an unintentional error made by the client. The Department has alleged that a Food Stamp overpayment has occurred based on an unintentional client error.
- 3) Policy states that the word customarily is used in the Food Stamp Program to mean over 50% of meals on a monthly basis. When a child is eligible for free or reduced price meals at school, these meals are considered provided by the person with whom the child resides.
- 4) The Parenting Agreement submitted into evidence cannot be recognized as a valid court order without the Family Court Judge's signature, and even if this order is valid, the Family Law Judge's authority can only address issues related to the divorce and custody of the children - not eligibility for state and federal benefits. While court ordered custody can clearly influence benefit eligibility, the deciding factor for determining Food Stamp eligibility is where the children eat their meals.
- 5) A review of the meals provided by each parent on a weekly basis (Finding of Fact #6) reveals that even if the children's mother was given credit for lunch at school every day (an additional 5 meals per week), based on the evidence that the children are not returned to their mother on Tuesday and Wednesday morning, she would still only be credited with 10 meals per week during the school schedule. Based on the evidence, the Claimant provides over 50% of the meals to his children on a monthly basis during the school and non-school schedule.

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 a Food Stamp Claims against the Assistance Group for the periods July 27, 2004 through December 31, 2004 (\$1822) and January 25, 2005 through June 30, 2005 (\$2012).

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of March, 2006.

**Thomas E. Arnett
State Hearing Officer**