



**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

April 5, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 31, 2006. Your hearing request was based on the Department of Health and Human Resources' action to establish a Food Stamp over issuance claim of \$330 for the period of June, 2003 through July, 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 over issuance occurred in the amount of \$330 during the period of June, 2003 through July, 2005 and the over issuance must be repaid.

It is the decision of the State Hearings Officer to uphold the action of the Department to establish a Food Stamp over issuance claim in the amount of \$330 for the period of June, 2003 through July, 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
Marshall Daniels, Repayment Investigator

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

_____,
Claimant,

v.

Action Number: 05-BOR-7180

**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 31, 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 31, 2006 on a timely appeal filed December 21, 2005. It should be noted that the hearing was originally scheduled for February 14, 2006 but was rescheduled at claimant's request.

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.

2. _____, Claimant's friend.
3. Marshall Daniels, 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 over issuance claim in the amount of \$330 for the period of June, 2003 through July, 2005 and to require repayment of such claim.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 11.3, 11.4, 11.5, 20.2.
Federal Food Stamp Regulations Sections 273.8, 273.10, 273.18.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 Copy of Quality Assurance Error Report (2 pages).
- DHS-2 Copy of verification from [REDACTED] Bank received 4-25-05 (2 pages).
- DHS-3 Copy of verification from [REDACTED] Bank requested 8-30-05 (3 pages).
- DHS-4 Copy of deletion of claimant's name from bank account 8-25-05.
- DHS-5 Copy of WV Income Maintenance Manual Section 11.3.
- DHS-6 Copy of Food Stamp Claim Determination 11-17-05 (3 pages).
- DHS-7 Copy of notification letter to claimant 11-18-05 (2 pages).
- DHS-8 Copy of WV Income Maintenance Manual Section 20.2 (4 pages).
- DHS-9 Copy of WV Income Maintenance Manual Section 11.5 (2 pages).
- DHS-10 Copy of printout of error claims and outstanding balances.

Claimant's Exhibits:

None (it should be noted that the claimant showed several documents to the State Hearing Officer but did not enter any of the documents into evidence).

VII. FINDINGS OF FACT:

- 1) The Department entered evidence marked as Exhibits #DHS-1 through #DHS-9 into the record. The claimant had requested a copy of the evidence and the State Hearing Officer ordered a copy of the evidence to be sent to the claimant on 3-9-05 and a copy of the evidence was sent to the claimant by Mr. [REDACTED] on or around 3-14-06 and the

claimant testified that she had received an envelope from Mr. [REDACTED] but was afraid to open it. The State Hearing Officer opened the envelope and handed the copy of evidence to the claimant.

- 2) Exhibit #DHS-1 shows a Quality Assurance report dated 7-14-05 indicating a finding that the claimant's assets of \$50,475.06 as of the month of April, 2005 exceeded the \$3,000 Food Stamp asset limit and that she was ineligible for the \$10 Food Stamp allotment.
- 3) Exhibit #DHS-2 shows checking accounts with balances of \$49,523.69 and \$951.37 as of April, 2005 in the name and social security # of the claimant in United National Bank.
- 4) Exhibit #DHS-3 shows verification obtained by Mr. [REDACTED] from United National Bank with an opening balance of \$50,419.14 on 5-7-03 with a continuous balance through July, 2005 of not less than \$48,932.62.
- 5) Exhibit #DHS-4 shows that the claimant deleted her name from the account of ____ or _____ on 8-25-05.
- 6) Exhibit #DHS-5 shows WV Income Maintenance Manual Section 11.3 which indicates the Food Stamp asset limit for an AG with a member age 60 to be \$3,000.
- 7) Exhibit #DHS-6 shows a Food Stamp Claim Determination indicating an over issuance of Food Stamps in the amount of \$330 for the period of June, 2003 through July, 2005.
- 8) Exhibit #DHS-7 shows that the claimant was notified of the over issuance claim on 11-18-05.
- 9) Exhibit #DHS-8 shows WV Income Maintenance Manual Section 11.5 including the regulation that if all joint owners are not included in the AG that the asset owned jointly is considered in its entirety to the AG unless it can be shown that it is inaccessible.
- 10) Exhibit #DHS-9 shows a computer printout which indicates Food Stamp error claims of \$330, \$242, and \$260 with outstanding balances of \$330, \$0, and \$82 respectively.
- 11) Testimony from the claimant revealed that she has not received Food Stamps in two (2) years, that the larger bank account was in the grandchildren's names and was only in her name in case something happened to the children, that the other account belongs to Mr. _____ and her name is on it, that there are different claim numbers, that she was not notified that any Food Stamps were being withheld to pay off a claim (it should be noted that the claimant testified about previous Food Stamp claims and alleged that varying amounts of money were withheld from taxes and Social Security benefits to repay Food Stamp claims but the issue of this hearing was the establishment of a Food Stamp claim of \$330 for the period of June, 2003 through July, 2005 and previous claims were ruled to be irrelevant and to have exceeded a 90 day time limit for requesting a hearing.)
- 12) Mr. Daniels stipulated that the claimant had not actually received the Food Stamp coupon allotment from December, 2003 through July, 2005 as the \$10 she was eligible for was being withheld to pay off a different Food Stamp claim. Mr. Daniels testified

that the claimant was entitled to the \$10 Food Stamps during the period in question and for that reason, a Food Stamp over issuance claim was established.

- 13) It should be noted that the claimant continued to attempt to discuss her case after the hearing was adjourned and the State Hearing Officer informed the claimant that the hearing was closed. It should also be noted that the State Hearing Officer received a phone message from the claimant on 4-2-06 during which the claimant attempted to discuss her case.

- 14) 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."

- 15) 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 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 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 over issuance.

- An unintentional error made by the client resulted in the over issuance.

NOTE: Items a and b below are used when the over issuance 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 over issuance initially occurred as follows:

a. Agency Errors

(1) Failure to Take Prompt Action

The first month of over issuance 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 over issuance 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 over issuance 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 over issuance. 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."

- 16) 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."

- 17) WV Income Maintenance Manual Section 11.3 states, in part:

“To be eligible for programs administered by the Division of Family Assistance (DFA), the total amount of countable assets cannot exceed the amounts which are listed in the following chart:

FOOD STAMP BENEFITS

\$2,000 – all AG’s except as below.

\$3,000 – at least one AG member is age 60 or over, or is disabled, according to Section 12.15, B, regardless of the size of the AG.”

- 18) WV Income Maintenance Manual Section 11.5 states, in part:

“ASSETS OF PERSONS IN SPECIAL CIRCUMSTANCES

A. FOOD STAMPS.....

3. Jointly Owned Assets.....

b. All Joint Owners Are Not In The AG

If all of the joint owners are not in the AG, the asset owned jointly is considered available in its entirety to the AG, unless it can be demonstrated that such assets are inaccessible. If the AG can demonstrate that it has access to only a portion of the asset, the value of that portion is an asset.”

- 19) The areas of dispute include whether a Food Stamp over issuance occurred as the claimant disputes that she was receiving Food Stamps for the last two (2) years and whether the bank account which exceeded the asset limit must be considered an asset to the claimant. While the claimant did not actually receive the coupon allotment, the evidence and testimony show that she had an active case and was entitled to an amount totaling \$330 for the period of June, 2003 through July, 2005. Since the claimant’s Food Stamps were being withheld to pay off another Food Stamp over issuance claim, she was entitled to the Food Stamps and an over issuance did occur. In regard to the issue of whether the bank account caused the claimant to exceed the asset limit, the claimant testified that she had access to the account and her name was on the account as a joint owner. The bank account was accessible to her and must be considered as an asset in its entirety.

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 determined after a Quality Assurance Review and investigation by Mr. Daniels that the claimant had assets accessible to her which exceeded the \$3,000 asset limit for the period of June, 2003 through July, 2005.

- 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. Even though the claimant did not receive the coupon allotment during the period in question, she was entitled to receive the coupon allotment which was being withheld to repay a previous claim. A Client Error claim was established due to client error and regulations require that the over issuance be repaid. Regardless of who caused the error which resulted in a Food Stamp over issuance, an over issuance claim would have to be established and repayment is required. The Department has correctly determined the over issuance of \$303 for the period of June, 2003 through July, 2005 and that the over issuance 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 over issuance claim in the amount of \$330 for the period of June, 2003 through July, 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 5th Day of April, 2006.

Thomas M. Smith
State Hearing Officer