



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 30, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 24, 2006. Your hearing request was based on the Department of Health and Human Resources' decision to establish an Agency error 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 as follows: When an assistance group has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing a claim. Collection action is initiated against the Assistance Group which received the overpayment. All claims, whether established as a result of an error on the part of the Agency or the household, are subject to recoupment. (West Virginia Income Maintenance Manual ' 10.4, C & 20.2)..

The information, which was submitted at your hearing, revealed that your household received an over issuance of Food Stamps during the months of July 2005 thru December 2005.

It is the decision of the State Hearing Officer to uphold the action of the Department to establish the Agency Error Food Stamp claim of \$720. and to seek repayment of the claim from you.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Crossland, DHHR

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

_____,
Claimant,

v.

Action Number: 05-BOR-7202

**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 January 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 on January 24, 2006 on a timely appeal, filed December 28, 2005.

It should be noted here that repayment and recoupment have been postponed pending a hearing decision.

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
_____, claimant's daughter

_____, claimant's wife
Karen Crossland, DHHR Repayment Investigator

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in their actions to establish and collect an overpayment of Food Stamps.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy § 1.2, 9.1, and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp Claim Determination
- D-2 Food Stamp Claim computation sheets
- D-3 Notice of Food Stamp over issuance dated December 23, 2005
- D-4 West Virginia Income Maintenance Manual Policy § 9.1
- D-5 West Virginia Income Maintenance Manual Policy § 20.2

VII. FINDINGS OF FACT:

- 1) _____ and _____ were in the _____ County DHHR office on June 14, 2005 for a scheduled review of their Food Stamp case.
- 2) The claimant reported and verified that his daughter, _____, was attending _____ School and that she was not employed.
- 3) The caseworker failed to apply the student policy and _____ remained as a member of the Food Stamp budget group.
- 4) The Department became aware of this error in December 2005 and preceded to remove the daughter from the Food Stamp budget group.
- 5) The Claims and Collection unit was notified of the potential overpayment and an agency error Food Stamp claim of \$720. was established for the months of July 2005 thru December 2005. Ms. Crossland, Repayment Investigator, issued a notice of this established Food Stamp claim on December 23, 2005.

- 6) Mr. _____ requested a hearing on December 28, 2005.
- 7) Mr. _____ and his witnesses do not believe they should be obligated to pay back benefits received due to an error made by the Department.
- 8) The claimant also believes that his daughter should not be classified as attending school full time since she is only at school five (5) hours per day. _____ attends _____ School from 5:00 PM to 10:00 PM on Monday thru Friday. Two of the five (5) hours per day are spent in a classroom setting and the other three (3) are spent in practical experience working in the schools salon.
- 9) The _____ School is considered an institution of higher education requiring a High School diploma or its equivalent for enrollment.
- 10) **WV Income Maintenance Manual § 9.1:**
Food Stamp Eligibility Determination groups:
 - Student participation in the food Stamp Program is limited to individuals who meet the criteria in item b.
 - He is attending school less than half time.
 - He is enrolled full-time in a school or training program which does not meet the definition of an institution of higher education. An institution of higher education is a business, technical, trade or vocational school that normally requires a high school diploma or its equivalent for enrollment.
 - He is participating in an on-the-job training program. This does not include the practical experience requirements, which may be part of some courses of study, i.e., student teaching, internships, etc.
 - The student is employed at least 20 hours per week and is paid for the employment.
- 11) **WV Income Maintenance Manual § 20.2**
Collection action is initiated against the assistance group which received the over issuance. A claim is established when: An unintentional error made by the client or the agency results in the over issuance.

Collections may be made on only one claim at a time. Claims are collected in the following priority order:
 - Intentional Program Violation
 - Unintentional Program Violation, Client error
 - Unintentional Program Violation, Agency error

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in Chapter 9.1 that a person enrolled in an Institution of Higher learning attending more than half time must be classified as a full time student for Food Stamp eligibility purposes. Testimony confirms that _____ was a full time college student during the months of July 2005 thru December 2005.

- 2) Testimony supports that Ms. _____ was not employed over 20 hours per week in paid employment. Her practical experience in the Schools salon can not be considered work time.
- 3) Policy 20.2 identifies an Agency Error claim as a claim that is collected against the assistance group who received the over issuance.

IX. DECISION:

I find that the claimant was over issued Food Stamp benefits during the months of July 2005 thru December 2005. I rule to **uphold** the agency in its actions to establish an Agency Error Food Stamp claim for \$720. and the collection of the overpayment from the claimant's assistance group.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of January 2006.

Sharon K. Yoho
State Hearing Officer