



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

April 3, 2006

Dear Ms. _____:

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' decision to establish 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 (AG) 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 information submitted at your hearing reveals that the Department erroneously added your baby to the Food Stamp Assistance Group effective October 1, 2005. According the evidence, your baby did not come home from the hospital until November 4, 2005 and therefore would not have been eligible to be included in the Food Stamp AG until December 2005. As a result, you received \$242 in Food Stamp benefits for which you were not eligible during the period October 1, 2005 through November 30, 2005.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to establish and seek collection of a Food Stamp claim in the amount of \$242 for the period October 1, 2005 through November 30, 2005.

Sincerely,

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

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

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

_____ ,

Claimant,

v.

Action Number: 06-BOR-988

**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 April 3, 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 January 27, 2006.

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
Marshall Daniels, SRI

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 October 1, 2005 through November 30, 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 Food Stamp Repayment Referral – Referral date 10/31/05
DHS-2a Case information on [REDACTED]
DHS-2b Case Comments from 9/30/05
DHS-3 Case Comments from 10/31/05
DHS-4 Case Comments 11/7/05
DHS-5 WVIMM Chapter 9.1
DHS-6 WVIMM Chapter 2.2.1.b Change Reporting AG's
DHS-7 WVIMM 2.2.C – Agency Time Limits
DHS-8 Food Stamp Claim Determination
DHS-9 Notification of FS Over issuance dated 1/20/06
DHS-10 Benefits Issuance History for October and November 2005
DHS-11 Rights and Responsibilities signed by the Claimant on 6/10/05
DHS-12 WVIMM 20.2 Food Stamp Claims and Repayment Procedures

VII. FINDINGS OF FACT:

- 1) The Claimant was notified via a Notification of FS (Food Stamp) Over issuance (DHS-9) that the Department was going to establish and seek repayment of a Food Stamp Claim in the amount of \$242 for the period October 1, 2005 through November 30, 2005. The over issuance is the result of a budget group (assistance group) error made by the Department.
- 2) The Department presented evidence to indicate that the over issuance of Food Stamp benefits occurred when the Agency incorrectly added the Claimant's newborn child (DHS-2A & DHS-2B), born on September 26, 2005, to the Food Stamp Assistance Group, hereinafter AG, effective October 1, 2005.
- 3) According to the evidence received at the hearing, DHS-1, DHS-3 and DHS-4, and testimony received from the Claimant, the Claimant's baby went home from the hospital on November 4, 2005. The Department cited policy from the West Virginia Income Maintenance Manual (Chapter 2.2), and indicated that a change in AG composition is to be effective the month following the change (effective December 1, 2005).

- 4) Because the child was erroneously added to the AG effective October 2005, the Department submitted exhibits DHS-8 (Food Stamp Claim Determination) and DHS-10 (Benefit Issuance History) to show that during the period October 1, 2005 through November 30, 2005, the AG received \$242 in Food Stamp benefits for which they were not eligible. The Department is not alleging fraud or any wrong-doing on the part of the Claimant. The proposed repayment claim is the result of an Agency Error.
- 5) The Department cited exhibit DHS-11, Rights and Responsibilities, signed by the Claimant on June 10, 2005. Page 2 of this exhibit reveals that the Claimant marked “yes” – I understand I will have to repay any Food Stamp benefits issued to me for which I was not eligible when the reason I received the incorrect benefits was because of an unintentional error made by me or by WV DHHR.
- 6) Policy found in the West Virginia Income Maintenance Manual ' 9.1.A (Who Must Be Included) states – A Food Stamp AG may be composed of any of the following individuals or groups of individuals, provided that such individuals or groups who live together are not residents of institutions or boarding houses.
- 7) West Virginia Income Maintenance Manual Chapter 2.2.B.1 reveals that Food Stamp recipients are required to report changes in AG composition with 10 days of knowledge of change or onset.
- 8) West Virginia Income Maintenance Manual Chapter 2.2.C provides Agency Time Limits for adding an AG member. Policy states that the change must be effective no later than the month following the month in which the change is reported.
- 9) West Virginia Income Maintenance Manual ' 10.4, C:
This section contains policy relating income disregards and deductions and computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and number (of persons) in the benefit group.
- 10) 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.

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

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that when there has been an over issuance of Food Stamp benefits, corrective is taken by establishing either an Unintentional Program Violation (UPV) or an Intentional Program Violation (IPV) Claim.
- 2) There are two types of UPV's - an error by the Department, or an unintentional error made by the client.
- 3) Policy that governs the Food Stamp Program reveals that a change in AG composition is effective the month following the month in which it is reported.
- 4) The evidence reveals that the Department erroneously added the Claimant's newborn son to the Food Stamp AG effective October 1, 2005. The Claimant's child did not go home from the hospital until November 4, 2005 and therefore would not have been eligible to be included in the Food Stamp AG until December 1, 2005. As a result of the Department's error, the Claimant received \$242 in Food Stamp benefits for which she was not eligible during the period October 1, 2005 through November 30, 2005.
- 5) The Department has correctly proposed repayment as policy makes no distinction between claims resulting from errors made by the Claimant or the Agency. The claim is the difference between the entitlement the assistance group received and the entitlement the assistance group should have received.

IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **uphold** the Agency's proposal to establish and seek repayment of a \$242 Food Stamp Claim against the Assistance Group for the period October 1, 2005 through November 30, 2005.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd Day of April, 2006.

**Thomas E. Arnett
State Hearing Officer**