



**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**

July 13, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 11, 2007. Your hearing request was based on the Department of Health and Human Resources' decision to establish an Agency Unintentional 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 April 2006 thru December 2006.

It is the decision of the State Hearing Officer to uphold the action of the Department to establish the Food Stamp claim of \$1377. and to seek repayment of the claim from your household.

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,

Action Number: 07-BOR-1087

**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 July 11, 2007 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 originally scheduled to be heard on May 2, 2007 and rescheduled and convened on July 11, 2007 on a timely appeal, filed April 2, 2007.

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
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 §2.2, 10.2, 10.3, 10 Appendix A, and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp Claim Determination and calculations
- D-2 West Virginia Income Maintenance Manual Policy § 20.2
- D-3 Notification letter Food Stamp Claim dated March 19, 2007

Claimant's Exhibits:

- C-1 Notification letters dated January 12, 2006

VII. FINDINGS OF FACT:

- 1) The claimant applied and was approved for Food Stamp benefits in January 2006 based on zero income. Her certification period was set up for 12 months to receive \$152. in benefits each month.
- 2) After case approval, the claimant began receiving the Social Security Survivor benefits of her deceased X-husband. On February 14, 2006, the Claimant was in the DHHR office and provided copies of monthly checks totaling \$1396., as she believed this income would affect her eligibility.
- 3) When the claimant realized that her benefits did not change, she contacted the Department's change center on July 10, 2006. She testified that the change center told her that any over issuance would be a Department error and that she would not be required to repay the over issuance.

- 4) In December 2006, the Department completed a review and was alerted to the fact that the income had been reported and verified and that the Department had failed to act on this reported information. The claimant received \$152. in stamps for April thru September and then \$155. in stamps for October thru December based on zero income.
- 5) The Claims and Collection unit was notified of the potential overpayment and a Food Stamp claim of \$1377. for months, April 2006 thru December 2006 was established.
- 6) The Repayment Investigator issued a notice of these claims on March 19, 2007. This notice indicated that the error was a CLIENT ERROR claim instead of an AGENCY ERROR claim.
- 7) Income limits for a household of one for the Food Stamp program is \$1062. monthly.
- 8) The claimant testified that she believed that since the error was made by the Department and that she was advised by the Change Center that she would not have to repay, that she should not be required to repay the over issuance of benefits.
- 9) **WV Income Maintenance Manual § 10.2 & 10.3:**
Income is defined as any and all monies received from any source.
The determination of countable income is necessary, because it is, generally, the countable income, which is tested against maximum income limits.
Once all incoming monies have been identified, they are compared to the income exclusions listed in this Chapter, and, if applicable, the income from any excluded source is subtracted from the incoming monies.

10.3 - MMM. RSDI Retirement, Survivors, Disability Ins. - Counted as unearned income for Food Stamps
- 10) **WV Income Maintenance Manual §10 Appendix A**
Income Limit 1 person household \$1062. Food Stamp Gross/Net Test
- 11) **WV Income Maintenance Manual §2.2:**
B. Reporting Requirements
Regardless of the AG's reporting requirements, all changes reported directly by an AG member, the AG's authorized representative and/or authorized EBT cardholder, or from a source that is listed as verified upon receipt must be acted on, even if the AG is not required to report the information.
- 12) **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 10.3 that RSDI is counted for both the Food Stamp program.
- 2) Income guidelines in Policy clearly show that the Social Security (RSDI) income received by this Claimant exceeded the limits for the Food Stamp program.
- 3) Policy in Chapter 2.2 stipulates that all changes reported directly by the AG member must be acted upon by the Department. The Department failed to do so and the overpayment resulted. While the Claimant did provide the income information that should have closed the case out, the Department's failure to follow through did result in an over issuance of benefits.
- 4) Policy 20.2 identifies an Agency Unintentional Error claim as a claim that is collected against the assistance group who received the over issuance. If the Change Center advised that this would not need to be repaid, this was information given in error.

IX. DECISION:

I find that the claimant's household was over issued Food Stamp benefits during the months of April 2006 thru December 2006 in the amount of \$1377. I rule to **uphold** the agency in its actions to establish an Agency Error claim and to collect these overpayments from the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th Day of July 2007.

Sharon K. Yoho
State Hearing Officer