



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P. O. Box 970  
Danville, WV 25053

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

June 29, 2007

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 8, 2007. 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 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 Agency correctly evaluated the \$600.00 your brother gave you monthly from December 2004 through June 2005 as unearned income for your household, which resulted in an overpayment of food stamps for the period of February 2005 through July 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 for the period of February 2005 through July 2005 in the amount of \$60.00.

Sincerely,

Cheryl McKinney  
State Hearing Officer  
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review  
Vicki Adkins, Repayment Investigator, [REDACTED] DHHR

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 07-BOR-1093**

**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 May 22, 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 convened on May 8, 2007 on a timely appeal filed March 29, 2007.

**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

Vicki Adkins, Repayment Investigator, Raleigh DHHR

Presiding at the Hearing was Cheryl McKinney, 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.

#### **V. APPLICABLE POLICY:**

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

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- D-1 Fair Hearing Summary
- D-2 Copy of Combined application and Review Form dated February 5, 2004
- D-3 Copy of Rights and Responsibilities dated February 5, 2004
- D-4 Notification letter dated January 20, 2005 and copy of letter from \_\_\_\_\_
- D-5 Copy of Case Comments dated January 20, 2005
- D-6 Copy of Case Comments dated February 3, 2005
- D-7 Copy of WV Income Maintenance Manual Section 10.3
- D-8 Copy of WV Income Maintenance Manual Section 20.2
- D-9 Copy of Notification letter dated March 12, 2007

##### **Claimant's Exhibits:**

- C-1 Copy of Money Order Receipt dated May 3, 2007 to CCCS
- C-2 Copy of physician's note dated May 7, 2007
- C-3 Copy of bill from [REDACTED] Inc. dated January 16, 2007
- C-4 Letter dated May 16, 2007 and various documents

#### **VII. FINDINGS OF FACT:**

- 1) On or about March 12, 2007, the Department notified the Claimant through a Notification of FS Overissuance (D-9) that she was issued \$60.00 in Food Stamp benefits for which she was not eligible. This notice states that the overissuance occurred during the period 2/01/05 to 7/31/05 because of unearned income.
- 2) The Claimant's last review form (D-2) was completed February 5, 2004, at which time the Claimant signed the Rights and Responsibilities form (D-3) indicating she understood that she would have to repay any benefits issued to her that she was not eligible for when the reason for receiving the incorrect benefits was because of an unintentional error made by her or by WV DHHR.

- 3) The Claimant reported (D-4) on January 20, 2005 that her brother was giving her money. The written statement she submitted to the Department reads as follows:

My brother \_\_\_\_\_ since December 3, 2004 has given me \$600.00 per month for rent and to help with the utilities. I am also his agent (payee) for Social Security. This arrangement is on the 3<sup>rd</sup> of each month. Thank you for your time. Sincerely, His Sister \_\_\_\_\_.

- 4) Department's recording in Claimant's brother's case (D-5) dated January 20, 2005 indicates the brother reported he gives his sister \$600.00 per month to go towards rent and utilities.
- 5) The Claimant testified that the statement she wrote on January 20, 2005 was not correct. She stated that her brother is a gambler, and the money he gave her was to pay his bills, not hers. She testified that she did not want to embarrass him by putting that information in the note. She reports that she paid his bills with the money he gave her monthly. She paid a consumer credit agency on his behalf. (C-1) She also testified that she is a senior citizen on social security benefits, and needs more food stamps. She provided a note from her physician (C-2) to substantiate that she needs to maintain nutrition and her health status. The Claimant presented a bill (C-3) for household repairs that she is responsible for paying. She also submitted various documents (C-4) including a handwritten letter detailing her financial situation, information from Consumer Credit Counseling and the Social Security Administration. These documents (C-4) confirm that she is representative payee for her brother. They also show that payments are being made to Consumer Credit Counseling Service on behalf of her brother.
- 5) West Virginia Income Maintenance Manual ' 10.4:  
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. This policy goes on to say that when at least one AG member is elderly, which is at least age 60, or disabled as specified in Section 12.15,B, eligibility is determined by comparing the countable income to the maximum "net" monthly income found in Appendix A . There is no gross income test.
- 6) 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 [emphasis added].
- 7) 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) The Department was correct in their decision to count the reported \$600.00 as unearned income for the Claimant, and correctly determined she was overissued Food Stamps in the amount of \$60 in Food Stamp benefits during the period 2/1/05 through 7/31/05. This is an Unintentional Program Violation (UPV) based on an Agency error. Although the Claimant testified that she did not report the information accurately for personal reasons, the Department was correct to determine the income as “countable” income for the period in question.
- 2) In accordance with Chapter 20 of the Income Maintenance Manual, the Department has correctly proposed repayment of the overissued Food Stamp benefits 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.
- 3) The Agency’s proposal to establish and seek collection of a repayment Claim is therefore affirmed.

### **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 Food Stamp Claim against the Claimant in the amount of \$60.00 for the period February 1, 2005 through July 31, 2005.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 29<sup>th</sup> Day of June, 2007.**

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**Cheryl McKinney  
State Hearing Officer**