



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

August 16, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 14, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to establish an Unintentional Program Violation (UPV) claim for food stamps.

In arriving at a decision, the State Hearing 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 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 entitlement the AG received and the entitlement the AG should have received. (Section 20.2 of the Income Maintenance Manual)

The information which was submitted at your hearing revealed that you were overpaid food stamps in the amount of \$192.00 due to an agency error.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to establish an Unintentional Program Violation (UPV) claim for food stamps. There is no distinction between client and agency errors.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

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

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

_____,

Claimant,

v.

Action Number: 07-BOR-1639

**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 August 14, 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 August 14, 2007 on a timely appeal, filed June 26, 2007.

It should be noted here that the Claimant's benefits have been continued pending the hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Food Stamp 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 (By telephone)
Danita Bragg, Repayment Investigator, DHHR

Presiding at the Hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED:

The question to be decided is whether the Department is correct in the decision to establish a UPV claim against the household because of an agency error concerning the income deductions.

V. APPLICABLE POLICY:

Sections 20.2, & 10.4B #6 of the West Virginia Income Maintenance Manual
7 CFR 273.18

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Form ES-FS-5 Food Stamp Claim Determination
- D-2 Food Stamp Calculation Sheet
- D-3 RAPIDS Screen IQFS Food Stamp Issuance History - Disbursement
- D-4 Food Stamp Allotment Determination
- D-5 Rights & Responsibilities dated 08/08/2006
- D-6 Income Maintenance Manual Section 10.4B #6
- D-7 Income Maintenance Manual Section 20.2

VII. FINDINGS OF FACT:

- 1) Testimony from the Repayment Investigator revealed that the Claims & Collection Unit of the Office of the Inspector General received a repayment referral March 30, 2007. The over issuance was due to the Claimant receiving a medical deduction for his Medicare premium. The Claimant was not eligible to receive this deduction as the State of WV was paying this premium for him through the Qualified Medicare Beneficiaries Program (QMB). The Claimant cannot receive a deduction for a premium that he himself is not paying.
- 2) An agency error was established 06/22/2007 in the amount of \$192.00 for the period September 2006 – April 2007. (Exhibit D-1) Testimony from the Repayment Investigator revealed that there is a prior claim in this case and recoupment is being withheld for repayment of that claim. The current claim of \$192.00 is based on the

amount of food stamps the Claimant was eligible to receive before the recoupment was withheld. (Exhibit D-4)

- 3) The Claimant disagrees that he has to repay an agency error. He also does not feel he received the amount of monthly food stamps used to calculate the claim.
- 4) The Claimant signed the Rights & Responsibilities form on 08/08/2006. Statement #5 under the Food Stamp Program reads “**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 DHHR.” (Exhibit D-5)
- 5) The evidence presented at the hearing shows that \$10.00 was deducted from the food stamp entitlement for the period September 2006 – April 2007 for recoupment. (Exhibit D-4)
- 6) Section 10.4B #6 of the West Virginia Income Maintenance Manual reads in part that medical expenses in excess of \$35 must be allowed as a medical deduction. Only the medical expenses of AG members who are elderly, which is at least age 60, or disabled, as defined in Section 12.15, B, are considered. Allowable expenses include Medicare premiums, except for cases in which the Department is paying the premium.
- 7) Section 20.2 of the West Virginia Income Maintenance Manual reads in part 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 (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the entitlement the AG received and the entitlement the AG should have received.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that allowable medical expenses include Medicare premiums, except for cases in which the Department is paying the premium.
- 2) A medical deduction for the Claimant’s Medicare premium was given in this case. The Claimant was not paying the premium as he was approved for the QMB Program.
- 3) The evidence and testimony in this hearing revealed that this agency error has resulted in an Unintentional Program Violation claim in the amount of \$192.00.
- 4) Policy requires 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 (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the entitlement the AG received and the entitlement the AG should have received. There is no distinction between agency and client errors.
- 5) The Department correctly determined that a UPV claim should be established due to an agency error.

IX. DECISION:

It is the finding of the State Hearing Officer that the Department is upheld in the decision to establish an Unintentional Program Violation claim against the household. Repayment will be initiated as policy dictates.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of August, 2007.

**Margaret M. Mann
State Hearing Officer**