



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 17, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 16, 2007. Your hearing request was based on the Department of Health and Human Resources' action to establish a Food Stamp overissuance claim of \$930 for the period of October, 2006 through March, 2007 and to require repayment of the claim.

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 the 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 or Intentional Program Violation claim (WV Income Maintenance Manual Section 20.2) and the decision related to the claim is subject to a Fair Hearing (7 CFR 273.18).

The information which was submitted at your hearing revealed that a Food Stamp overissuance due to client error occurred in the amount of \$930 during the period of October, 2006 through March, 2007 and the overissuance must be repaid.

It is the decision of the State Hearings Officer to uphold the action of the Department to establish a Food Stamp overissuance claim in the amount of \$930 for the period of October, 2006 through March, 2007 and to require repayment of the claim.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

_____,

Claimant,

v.

Action Number: 07-BOR-1868

**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 October 16, 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 October 16, 2007 on a timely appeal filed July 30, 2007.

It should also be noted here that repayment of benefits has been pending a hearing decision. It should also be noted that the hearing was originally scheduled for August 30 and September 11, 2007 but was rescheduled initially by the State Hearing Officer and then at claimant's request.

II. PROGRAM PURPOSE:

The Program entitled Food Stamp Program 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:

1. _____, Claimant.
2. Brian Shreve, Repayment Investigator.

(It should be noted that the claimant informed the State Hearing Officer on 9-11-07 prior to convening the hearing that attorney _____, who represented her during a court case, had informed her that he would testify in her hearing (but not represent her). Mr. _____ did not attend and the claimant requested a continuance in order for Mr. _____ to attend. A copy of the appointment notice for 10-16-07 was sent to Mr. _____ and the claimant informed the State Hearing Officer that Mr. _____ was supposed to attend the hearing but he did not attend. The claimant informed the State Hearing Officer that Mr. _____ sent her a copy of the plea agreement which she would enter into evidence).

Presiding at the Hearing was Thomas M. Smith, 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 Department took the correct action to establish a Food Stamp overissuance claim in the amount of \$930 for the period of October, 2006 through March, 2007 and to require repayment of such claim.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 9.1, 20.2.
Federal Food Stamp Regulations Sections 273.11, 273.18.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of case comments 4-3-07 and 4-4-07 (2 pages).
- D-2 Copy of Prisoner Match Information Display Screen.
- D-3 Copy of order from _____ County Circuit Court 5-1-06.
- D-4 Copy of Sentencing Order from _____ Co. Circuit Court 7-12-06 (2 pages).
- D-5 Copy of case comments 9-21-06.
- D-7 Copy of WV Income Maintenance Manual Section 9.1 A, 2, g.
- D-8 Copy of Federal Regulations 273.11 (9 pages).
- D-9 Copy of notification letter dated 7-2-07.

Claimant's Exhibits:

- Cl-1 Copy of Plea Order from _____ Co. Circuit Court entered 6-13-06 (4 pages).

VII. FINDINGS OF FACT:

- 1) The Department caseworker discovered during a Food Stamp review on 4-3-07 that a computer prison match showed the claimant's name and the Prosecuting Attorney's office informed the caseworker that the claimant had been convicted of a drug felony on 5-1-06.
- 2) The case was referred to the Repayment Investigator for repayment and the Repayment Investigator determined that the claimant was ineligible for Food Stamps from October, 2006 through March, 2007 as individuals convicted of a drug felony are excluded from Food Stamp participation by law.
- 3) Mr. Shreve testified that the claimant has a drug felony conviction which made her ineligible for Food Stamps and precluded her from participating in the Food Stamp Program and that an overissuance of \$930 occurred for the period of October, 2006 through March, 2007 and the overissuance must be repaid.
- 4) The claimant was notified of the overissuance on 7-5-07 (Exhibit #D-9).
- 5) The claimant presented a copy of the Plea Order in ██████████ County Circuit Court which was entered on 6-13-06 (marked as Exhibit #CI-1) and stated that she pled guilty to conspiracy only and that her attorney told her that all drug charges were dropped because of her plea. The claimant testified that her attorney told her she should not have to pay back Food Stamps as the drug charges were dropped.
- 6) WV Income Maintenance Manual Section 20.1 states, in part:

"The Department is responsible for accurately determining the client's eligibility for Food Stamps, cash assistance (AFDC/U, TANF, and WV WORKS) and Medicaid. When it is discovered that excess benefits have been issued, corrective action must be taken."
- 7) WV Income Maintenance Manual Section 20.2 states, in part:

"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 coupon allotment received by the AG and the coupon allotment the AG was entitled to receive....."

NOTE: Referrals are made for all overissuances, regardless of the dollar amount. Claims are not written for under \$50 unless there is a liable debtor receiving Food Stamps at the time the claim is referred, the error is discovered as the result of a QZ review, or it is an IPV claim. In these three situations claims under \$50 are written and collected. IPV claims must be established regardless of the total amount or participation status of the liable debtor(s). See Section 20.2 E for definition of who is a liable debtor.....

C. IDENTIFYING THE MONTH(S) AND AMOUNT FOR WHICH CLAIMS ARE ESTABLISHED

The number of month(s) for which claims are established depend on whether it is an IPV or UPV.....

Claims are not established for excess benefits received solely due to the 13-day advance notice period.

1. UPV Claims

There are two 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.

NOTE: Items a and b below are used when the overissuance is not contested in a Fair Hearing. If a Fair Hearing is held, the Hearings Officer's decision is final.

A client error UPV is only established retroactively for the 6-year period preceding the month of discovery. An Agency error is only established retroactively for the one-year period preceding the date of the claim.

The Repayment Investigator determines the month in which the overissuance initially occurred as follows:

a. Agency Errors

(1) Failure to Take Prompt Action

The first month of overissuance is the month the change would have been effective had the agency acted promptly.....

b. Client Errors

When the client fails to provide accurate or complete information, the first month of the overissuance is the month the incorrect, incomplete, or unreported information would have affected the benefit level considering noticing and reporting requirements.

NOTE: When determining the amount of overissuance due to the failure of the household to report earned income in a timely manner, the amount of the benefits the client should have received is computed without applying the earned income disregard to any portion of the income the client did not report. This applies to IPV claims for benefits issued for October, 1987 and later and to UPV claims established on or after November 1, 1996.....

2. IPV Claims

IPV's include making false or misleading statements, misrepresentations, the concealing or withholding of facts, and committing any act that violates the Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.....

An IPV can only be established in the following ways:

- The client signs an IG-BR-44, Waiver of Rights to ADH.....

D. FACTORS AFFECTING THE AMOUNT OF THE CLAIM

There are no special factors affecting the amount of the Food Stamp claim.

E. COLLECTING THE CLAIM

Collection action is initiated against the AG which received the overissuance. When the AG composition changes, collection is pursued against any and all AG's which include a liable debtor.....

2. Claim Notification

a. UPV Claims

The AG is notified of the Food Stamp claim by computer-generated notification/demand payment letters from RAPIDS. Enclosed with the letter is a repayment agreement, form ES-REPAY-1 and a postage-paid envelope.....

3. Collecting Procedures

a. Offsetting Lost Benefits

A claim, whether UPV or IPV, must be collected by offsetting when lost benefits are owed to the AG, but have not yet been restored.....

b. Treasury Offset Program (TOP)

All IPV and client UPV claims are subject to collection through the Treasury Offset Program (TOP). Claims which have a payment balance of at least \$25 are delinquent and are not over 10 years old, are subject to referral for collection of the claim by offset of the client's federal income tax refund and any federal benefits/payments. Agency caused UPV claims, established on or after 11-1-96, are eligible for Treasury Offset Program collection under the condition described above. Judgment claims are not subject to the 10-year limitation.....

F. DETERMINING THE REPAYMENT AMOUNT

The minimum amount of repayment is determined as follows:

1. UPV Client and Agency errors

(a) Current Recipients

The current coupon entitlement is reduced by 10% or \$10, whichever is greater.

(b) Former Recipients

Form ES-REPAY-1 offers the liable debtor the following options for repayment.

(1) Lump Sum Payment

One payment is made to pay the claim in its entirety.

(2) Installment Payments

When the AG is financially unable to pay the claim in one lump sum, regular monthly installment payments are accepted. The minimum amount of the monthly payment is \$50. If the CI/RI determines that the AG cannot afford the minimum payment, the payment amount is negotiated on a case-by-case basis.....

G. RIGHT TO A FAIR HEARING

The client has 90 days from the date of the initial notification/demand payment letter in which to request a Fair Hearing. The Hearings Officer only rules on the type and amount of the claim."

8) Federal Food Stamp regulations contained in 7 CFR 273.18 state, in part:

"Claims against households.

(a) General. (1) A recipient claim is an amount owed because of:

- (i) Benefits are overpaid or
- (ii) Benefits are trafficked....

(2) This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations.....

(b) Types of claims. There are three types of claims:

- (1) Intentional Program Violation (IPV) claim.....
- (2) Inadvertent household error (IHE) claim.....
- (3) Agency error (AE) claim. Any claim for an overpayment caused by an action or failure to take action by the State agency.....

(c) Calculating the claim amount.....

(3) Notification of the claim. (i) Each State Agency must develop and mail or otherwise deliver to the household written notification to begin collection action on any claim.....

(iii) If the claim or the amount of the claim was not established at a hearing, the State agency must provide the household with a one-time notice of adverse action. The notice of adverse action may either be sent separately or as part of the demand letter.

(iv) The initial demand letter or notice of adverse action must include language stating:

(A) The amount of the claim.....

(I) Unless the amount of the claim was established at a hearing, the opportunity for a fair hearing on the decision related to the claim, The household will have 90 days to request a hearing."

9) WV Income Maintenance Manual Section 9.1 A, 2, g states:

"Individuals Excluded by Law

Persons who are excluded by law as found below are ineligible and may not be a separate AG. The periods of ineligibility are as follows:

Convicted of a felony offense which occurred on or after 8/23/96 which involved possession, use or distribution of a controlled substance as defined by section 802 (6) of the Controlled Substance Act."	Permanent
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10) The area of dispute involves whether the claimant's guilty plea involved a drug felony. The evidence provided by the claimant (Plea Order entered in [REDACTED] Co. Circuit Court on 6-13-06) states that the claimant pled guilty to a charge of "conspiracy a felony". The claimant was charged with "the act of delivery of a Schedule II Controlled Substance, Crack Cocaine". The State Hearing Officer finds that the evidence clearly shows that the claimant pled guilty to a felony of conspiracy related to drugs or controlled substances. The regulations clearly state that a conviction of a felony offense which involves

11) the possession, use or distribution of a controlled substance precludes the individual from participating in Food Stamps. There is no evidence that the drug charges against the claimant were dropped. Thus, the State Hearing Officer finds that the claimant received an overissuance of Food Stamps in the amount of \$930 for the period of October, 2006 through March, 2007 and the overissuance must be repaid.

VIII. CONCLUSIONS OF LAW:

WV Income Maintenance Manual Section 20.1 states that the Department is responsible for accurately determining the client's eligibility for Food Stamps and that when it is discovered that excess benefits have been issued, corrective action must be taken. WV Income Maintenance Manual Section 20.2 states 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 or Intentional Program Violation. In this case, an Unintentional Program Violation was established due to client error and regulations require that the overissuance be repaid. The Department has correctly determined the overissuance of \$930 for the period of October, 2006 through March, 2007 and that the overissuance must be repaid.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to establish a Food Stamp overissuance claim in the amount of \$930 for the period of October, 2006 through March, 2007 and to require repayment of the claim.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of October, 2007.

Thomas M. Smith
State Hearing Officer