



**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**

February 26, 2007

Dear Mr. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 21, 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 Violation Claim (UPV) 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 \$4,884.00 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: 06-BOR-3305

**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 February 21, 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 February 21, 2007 on a timely appeal, filed November 15, 2006.

It should be noted that this hearing was originally scheduled for January 9, 2007. The hearing was rescheduled by the State Hearing Officer for February 21, 2007 because of inclement weather.

It should be noted here that the Claimant's benefits have been terminated.

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
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 countable assets.

V. APPLICABLE POLICY:

Sections 20.2, 11.3, & 11.4CC #3 of the West Virginia Income Maintenance Manual
7 CFR 273.18

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Agency Form ES-FS-5 – Food Stamp Claim Determination Form
- D-2 IQFS Screen Prints from the RAPIDS Computer System
- D-3 EFAD Screen Prints from the RAPIDS Computer System
- D-4 Rights & Responsibilities signed 12/16/2004
- D-5 Copies of Tax Tickets & Deeds for Non-Homestead Property
- D-6 Income Maintenance Manual Chapter 11.4 – CC 3
- D-7 Income Maintenance Manual Chapter 11.6
- D-8 Income Maintenance Manual 20.2
- D-9 Notification of FS Overissuance dated 07/26/2006

VII. FINDINGS OF FACT:

- 1) The Claims & Collection Unit of the Office of the Inspector General received a repayment referral February 15, 2006 for the case being over asset and ineligible to receive food stamp benefits. It had been stated the assets had not been reported prior to this discovery of the properties. However, after meeting with the Claimant and pulling old case records it was determined that the property had indeed been reported in the past in another case. The claim has been coded as an agency error.
- 2) The rediscovery of the assets occurred 07/22/2005. The Claimant has his homestead property which does not affect the food stamp case. In addition, there is property listed on Tax Ticket [REDACTED] which is not adjoining any other property owned by the Claimant which is valued at \$9,000 has been deeded to the Claimant, his wife and his son since July 15, 2002. There are also two adjoining lots deeded to the Claimant and his wife.

Lot [REDACTED] of the [REDACTED] has been deeded to them since January 12, 1999, Tax Ticket [REDACTED] valued at \$400, and Lot [REDACTED] has been deeded to the Claimant and his wife since September 9, 1998, valued at \$1600, Tax Ticket 16881. (Exhibit D-5)

- 3) The value of the non-homestead property totals \$11,000 (\$9,000, \$400, and \$1,600). The allowable asset level for this household is \$2,000. A claim was established 07/25/2006 in the amount of \$4,884 for the claim period September 2004 through June 2005. (Exhibits D-1, D-2 & D-3) A Notification of FS Overissuance was sent to the Claimant dated 07/26/2006. (Exhibit D-9)
- 4) The Claimant requested a hearing on this issue 11/15/2006. He does not feel he should be held responsible for repaying an over issuance which was caused by an agency error. Testimony from the Claimant revealed that he initially reported the property. He brought in all verification that was requested. The property valued at \$9,000 was his son's property. The other two lots is property he inherited from his mother.
- 5) The Claimant signed the Rights and Responsibilities 12/14/2004. Statement #7 under the Food Stamp Program reads that "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." (Exhibit D-4)
- 6) Section 11.3 of the West Virginia Income Maintenance Manual reads in part: To be eligible for programs administered by the Division of Family Assistance (DFA), the total amount of countable assets cannot exceed the amounts listed. For food stamp benefits, the asset limit is \$2,000 all AG's except \$3,000 when at least one AG member is age 60 or over, or is disabled, according to Section 12.15B, regardless of the size of the AG.
- 7) Section 11.4CC #3 of the West Virginia Income Maintenance Manual reads in part that the value of other non-homestead property – The equity in property, not otherwise excluded, is an asset.
- 8) Section 20.2 of the West Virginia Income Maintenance Manual reads in part that when an AG has been issued more Food Stamps then it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or Intentional Violation Claim (UPV) 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 the food stamp asset limit is \$2,000 for all AG's except \$3,000 when at least one AG member is age 60 or over or is disabled, regardless of the size of the AG.
- 2) The Department has determined that the countable assets in this case total \$11,000. This is the value of non-homestead property owned by the household. This amount exceeds

\$2,000. Un-refuted testimony from the Claimant revealed that he reported this information at the time of the initial application. This agency error has resulted in an Unintentional Program Violation claim in the amount of \$4,884.

- 3) Policy requires that when an AG has been issued more Food Stamps then it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or Intentional Violation Claim (UPV) 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.
- 4) 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 26th Day of February, 2007.

**Margaret M. Mann
State Hearing Officer**