



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

January 26, 2007

Dear Mr. _____:

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

It is the decision of the State Hearing Officer to uphold the action of the Department to establish the Agency Error Food Stamp claim of \$307. and to seek repayment of the claim from you.

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,

v.

Action Number: 06-BOR-3396

**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 January 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 convened on January 11, 2007 on a timely appeal, filed November 29, 2006.

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
_____, claimant's mother

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 §9.1, and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp Claim Determination
- D1a Claim calculation sheets
- D-2 West Virginia Income Maintenance Manual Policy § 9.1b
- D-3 West Virginia Income Maintenance Manual Policy § 20.2
- D-4 Notification letter dated October 23, 2006

VII. FINDINGS OF FACT:

- 1) The claimant had been an active Food Stamp participant under the Able Bodied Adult Without Dependents (ABAWD) program. He qualified for an exemption to the three-month limitations dictated by the ABAWD policy, due to his receiving Unemployment benefits.
- 2) The claimant's Unemployment benefits stopped after May 2006. The Department failed to discontinue his Food Stamp benefits after the allowed three months of non-exempt Food Stamps were received in June, July and August.
- 3) The claimant notified the caseworker that his unemployment benefits had ended, but the worker did not follow through to discontinue the Food Stamps after August.
- 4) September and October benefits were received in error.
- 5) The Claims and Collection unit was notified of the potential overpayment and an agency error Food Stamp claim of \$307. was established for the months of September and August 2006. The Repayment Investigator issued a notice of this established Food Stamp claim on October 23, 2006.
- 6) The claimant requested a hearing on November 29, 2006.

- 7) The claimant and his mother do not believe he should be obligated to pay back benefits received due to an error made by the Department. The claimant's mother testified that she tried to tell the caseworker that her son had already gotten his three months of Food Stamps and that he should not get any after the three months.

8) **West Virginia Income Maintenance Manual § 9.1 - FOOD STAMP ELIGIBILITY DETERMINATION GROUPS:**

NOTE: For all the following possible AG, an individual who meets the definition of an ABAWD in item j below can only receive AG benefits when he is otherwise eligible and:

An individual who meets the definition of an ABAWD can only receive AG benefits when he is otherwise eligible and:

Is meeting the work requirements; or

Is residing in a Non-Issuance Limited County; or

Regains eligibility after meeting the ABAWD work requirement, becoming exempt, or moving to a Non-Issuance Limited County; or

Is in the first or second 3-month limit period while not meeting the work requirement or being exempt.

9) **West Virginia Income Maintenance Manual § 9.1 - FOOD STAMP ELIGIBILITY DETERMINATION GROUPS:**

Able-Bodied Adults Without Dependents (ABAWD)

(1) Definition of ABAWD

An ABAWD is any individual age 18 or over, but not yet age 50.

An individual who turns 18 becomes an ABAWD in the month following his birthday. An individual is no longer an ABAWD in the month of his 50th birthday.

(2) Exemptions

Receiving Food Stamps while exempt does not count toward the 3-month limit.

An Individual is exempt if he:

- Lives with an individual under age 18. The individual under age 18 does not have to be in the AG.

- Is responsible for the care of an incapacitated person, whether or not the person receiving the care resides with the client and whether or not the incapacitated person is a member of the Food Stamp AG; or

- Is receiving UCI as the result of registering with BEP; This includes persons receiving benefits under the Trade Readjustment Act (TRA); or

- Is medically certified as physically or mentally unfit for employment according to the provisions in Section 12.15; or

- Is a pregnant woman, regardless of the expected date of delivery; or
- Is a regular participant in a drug addiction or alcoholic treatment and rehabilitation program either on a resident or non-resident basis; or
- Is a student enrolled at least half-time in any recognized school, training program or institution of higher education? A student must meet one of the exceptions to the restriction on student participation listed in Chapter 9; or
- Resides in one of the following ILC's: Brooke, Doddridge, Hancock, Hardy, Marshall, Monroe, Pendleton, Putnam, Randolph, Taylor, Tyler; or
- Is hired for work at least 30 hours per week; or
- Is hired for work paying the equivalent of at least 30 hours times the minimum wage per week.

10) **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 9.1 that without an exemption, a recipient classified as an ABAWD can only receive Food Stamps for three months.
- 2) Testimony and evidence support that the claimant was no longer exempt when his Unemployment benefits stopped in May 2006 and that after August, he was no longer eligible for Food Stamps.
- 3) Policy 20.2 identifies an Agency Error claim as a claim that is collected against the assistance group who received the over issuance. Policy does not offer any relief of a debt when the overpayment was the fault of the Department.

IX. DECISION:

I find that the claimant's household was over issued Food Stamp benefits during the months of September and October 2006. I rule to **uphold** the agency in its actions to establish an Agency Error Food Stamp claim for \$307. as well as to collect the overpayment from the claimant's assistance group.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th Day of January 2007.

**Sharon K. Yoho
State Hearing Officer**