



**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 22, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 7, 2007. Your hearing request was based on the Department of Health and Human Resources' action to include you as a liable debtor when establishing an Intentional Program Violation (IPV) claim.

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) 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 liable debtor. The following persons are equally liable for the total amount of the overpayment and are liable debtors: Adult or emancipated minors in the AG.....an unreported adult who would have been required to be in the AG had he been reported. (Section 20.2E of the West Virginia Income Maintenance Manual)

The information which was submitted at your hearing revealed that the Department determined you were a member of the household in which the IPV claim was established.

It is the decision of the State Hearing Officer to uphold the action of the Department to include you as a liable debtor when establishing an Intentional Program Violation (IPV) claim for food stamps.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
[REDACTED]
Christopher Nelson, DHHR

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

_____,

Claimant,

v.

Action Number: 06-BOR-3471

**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 June 7, 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 June 7, 2007 on a timely appeal, filed July 13, 2006. The hearing request was received by the State Hearing Officer February 2, 2007. It should be noted that this hearing was originally scheduled for April 4, 2007. The hearing was rescheduled twice at the request of the Claimant's attorney. The dates were May 9, 2007 and June 7, 2007.

During the hearing the State Hearing Officer noted that the Board of Review Action Number on this case was _____. The correct Board of Review Action Number is _____.

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

Christopher Nelson, Criminal Investigations Supervisor

Observing:

Trish Kerbawy, Repayment Investigator Supervisor

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 include the Claimant as a liable debtor in an IPV claim for food stamps.

V. APPLICABLE POLICY:

Sections 20.2, & 10.4A of the West Virginia Income Maintenance Manual
7 CFR ' 273.16 & 7 CFR ' 273.18

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Indictment Case No. 05-F-18 - State of West Virginia vs. _____ dated 05/10/2005
- D-2 Pretrial Diversion Agreement dated 09/13/2005
- D-3 Pretrial Diversion Hearing Order dated 09/29/2005
- D-4 Repayment notice dated 09/27/2005
- D-5 Notice of FS Overissuance dated 01/10/2006
- D-6 Case Moran v. Reed No. 16460 Supreme Court of Appeals of West Virginia 12/11/1985
- D-7 State of West Virginia v. Honorable Larry V. Starcher No. 22966 Supreme Court of Appeals of West Virginia – Decided 10/27/1995
- D-8 Section 9.1 of the West Virginia Income Maintenance Manual
- D-9 Sections 20.1 & 20.2 of the West Virginia Income Maintenance Manual

VII. FINDINGS OF FACT:

- 1) The Grand Jurors in _____ County indicted the Claimant for the following: “That from on or about the ___ day of May, 2000, through on or about the ___ day of December, 2002, in the County of _____ State of West Virginia, (Claimant), did commit the felonious offense of “FRAUDULENTLY OBTAINING WELFARE ASSISTANCE” by intentionally and feloniously obtaining any class of welfare assistance to which he was not entitled, by means of giving a willfully false statement and making a willful misrepresentation to the West Virginia Department of Health and Human Resources and receiving benefits in the amount of Nine Thousand Seven Hundred Sixty

(\$9,760.00) Dollars, against the peace and dignity of the State of West Virginia,” (Exhibit D-1)

- 2) A Pretrial Diversion Agreement was signed by the [REDACTED] County Prosecutor and the Claimant 09/13/2005. (Exhibit D-2) The agreement includes a statement that the Claimant “shall pay **RESTITUTION, jointly and severally with [REDACTED]** to the victim, West Virginia Department of Health and Human Resources, in the total amount of Twenty Four Hundred Dollars (\$2,400.00)....” It reads in part that “This pretrial diversion agreement constitutes the entire plea agreement between the parties, and it is hereby expressly acknowledged that no other agreement or agreements other than those appearing upon this plea agreement exist.”
- 3) A Pretrial Diversion Hearing Order (Exhibit D-3) approving the pretrial agreement was issued 09/29/2005.
- 4) A letter was issued to _____ 09/27/2005. (Exhibit D-4) It reads in part: “The Department of Health and Human Resources has determined that you received benefits totaling **\$9760.00** from this Agency to which you were not entitled. This amount consists of **\$9760.00** food stamps, **\$0.00** cash assistance, and **\$0.00** other (specify). An administrative overpayment claim has been established against your household for the total amount. You were recently ordered by the Circuit Court of [REDACTED] County to make restitution of only a portion, if any, of that amount, or **\$2400.00 (Order # _____ dated or filed on 09/13/05)**. Payment of the court-ordered restitution serves towards satisfying a condition of your probation, or towards otherwise disposing of any and all possible **criminal** charges associated with the circumstances causing this overpayment. However, you also remain responsible for repayment of any benefits overpaid to you as determined by Agency regulations and policy. This may even include any portion of the entire claim which a spouse, or other co-defendant household member, was ordered to pay, IF after all probation periods expire, the entire claim has not been paid in full.”
- 5) A letter was sent to _____ dated 01/10/2006 (Exhibit D-5) which reads in part that “We have determined that you were issued more Food Stamp benefits than you were eligible to receive during the period of 05/31/00 to 12/31/02, because of UNEARNED INCOME.a(n) FRAUD (IPV) claim for \$9760.00 has been established against your household.”
- 6) Testimony from the Criminal Investigations Supervisor revealed that an IPV claim was established as a result of the Pretrial Order. Sanctions were placed on both _____ & _____. The sanctions were not contested.
- 7) The Claimant agreed to pay \$2,400.00 and feels he is not responsible for the balance of the IPV claim which is \$7,360.00.
- 8) Section 9.1A of the West Virginia Income Maintenance Manual reads in part the Food Stamp AG (Assistance Group) must include all eligible individuals who both live together and purchase and prepare their meals together. A group of individuals who live together, and for whom food is customarily purchased and prepared together, is an AG. Customarily is used to mean over 50% of meals on a monthly basis. See item (2) below for exceptions. Exception: The following individuals who live together must be in the same AG, even if they do not purchase and prepare meals together. Spouses – For these

purposes, spouses are individuals 1) Who are married to each other under state law; or 2) Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors or trades people.

- 9) 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.
- 10) Section 20.2C #2 of the West Virginia Income Maintenance Manual reads in part that IPV's include making false or misleading statements, misrepresentations, concealing or withholding information, 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, receipt, or possession of Food Stamps. An IPV can only be established in the following ways.....By court decision. After the first month is determined, the Repayment Investigator/Criminal Investigator identifies the subsequent months in which overissuances resulted from the same IPV act.
- 11) Section 20.2E of the West Virginia Income Maintenance Manual reads in part that 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 liable debtor. The following persons are equally liable for the total amount of the overpayment and are liable debtors: Adult or emancipated minors in the AG.....an unreported adult who would have been required to be in the AG had he been reported.
- 12) Any information submitted to the State Hearing Officer by the Department and the Claimant after the date of the hearing was not admitted into the record.

VIII. CONCLUSIONS OF LAW:

- 1) 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.
- 2) The Department established an IPV claim against the household in 2005.
- 3) Policy also dictates that the following persons are equally liable for the total amount of the overpayment and are liable debtors: Adult or emancipated minors in the AG.....an unreported adult who would have been required to be in the AG had he been reported.
- 4) The Department correctly determined that the Claimant is a liable debtor in this case.

IX. DECISION:

It is the finding of the State Hearing Officer that the Department is upheld in the decision to establish the Claimant as a liable debtor in this repayment of an Intentional Program Violation claim. 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 22nd Day of August, 2007.

**Margaret M. Mann
State Hearing Officer**