



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager _____
Secretary

August 22, 2008

_____ and _____

Dear Mr. _____ and Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 14, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to establish a Client Error Food Stamp and WV Works 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 and WV Works 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 § 20.2 and 20.3).

The information which was submitted at your hearing revealed that your countable assets exceeded the asset limit for Food Stamps and WV Works and therefore received benefits for which you were not eligible for.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to establish a Food Stamp and WV Works Client Error Repayment Claim.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Rusty Udy, Repayment Investigator

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

_____, Claimant
_____, Co-Claimant

v. **Action Number: 08-BOR-1764
08-BOR-1789**

**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, 2008 for _____ and _____. 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, 2008 on a timely appeal, filed July 16, 2008.

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
_____, Co-Claimant

Rusty Udy, Repayment Investigator

Presiding at the Hearing was Kristi Logan, 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 Department's proposal to establish a WV Works and Food Stamp repayment claim is correct.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 11.3, 11.4, 20.2 and 20.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 List of Evidence and Department's Case Summary
- D-2 Case Members History Screen (AQCM) from Rapids Computer System
- D-3 Cash Assistance Issuance History/Disbursement Screen (IQAF) from Rapids Computer System
- D-4 Food Stamp Issuance History/Disbursement Screen (IQFS) from Rapids Computer System
- D-5 Case Comments Screens (CMCC) from Rapids Computer System
- D-6 Repayment Referral Screen (BVRF) from Rapids Computer System
- D-7 Repayment Referral Screen (BVRF) from Rapids Computer System
- D-8 Repayment Referral Screen (BVRF) from Rapids Computer System
- D-9 Financial Statements from Principal Financial Group
- D-10 Combined Application Forms and Rights and Responsibilities Forms
- D-11 West Virginia Income Maintenance Manual § 1.2 E
- D-12 West Virginia Income Maintenance Manual § 11.3
- D-13 West Virginia Income Maintenance Manual § 11.4 AA (3)
- D-14 West Virginia Income Maintenance Manual § 20.2

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

- 1) Claimants applied for Food Stamps and WV Works in July 2004. The asset reported at that time was a checking account. Claimants continued to receive Food Stamps through December 2007 and received a total of eight (8) months of WV Works.
- 2) At a Food Stamp review on November 30, 2007 Claimant reported that he had a 401k with a balance of \$3,000. The caseworker requested verification of this asset. This verification was received on December 10, 2007. What Claimant had thought was a 401k was actually an IRA Money Market account with a balance of \$3,482.57. The money was accessible to Claimant with a 10% early withdraw penalty. Food Stamps were closed at that time until the money in the IRA account was withdrawn and spent (D-5).

- 3) The Department discovered that Claimant had the IRA account since at least 2003 and the balance of the account was more than the \$2,000 asset limit for both programs making Claimants' household totally ineligible for Food Stamps and WV Works since their application in 2004. A notification letter was issued on April 29, 2008 notifying Claimants that a Client Error repayment claim had been established against them. They would be responsible for a repayment of WV Works of \$2,909 and Food Stamps of \$15,522.
- 4) Claimant testified that he used to work for a company in [REDACTED] in 1991 or 1992 called [REDACTED]. The company started a 401k plan and he signed up for it. In order for Claimant to change jobs within that company, he had to quit and be rehired. During that process, the company withdrew the money they had matched in the account leaving him with around \$200.

Claimant stated he forgot all about the account after leaving that job and moving back to West Virginia. The financial statements for the account were mailed to his father's address in [REDACTED]. He stated his father threw them away.

When Claimant finally learned of the account, he reported it to the Department. He never knew it was an IRA instead of a 401k as he was first told. He also did not know he had that much money in the account. He withdrew the money in December 2007 and caught up on some bills to remain eligible for Food Stamps.

- 5) West Virginia Income Maintenance Manual §11.3 states:

Maximum Allowable Assets

Food Stamp Benefits

- \$2,000 – all Assistance Groups (AG) except as below
- \$3,000 – at least one AG member is age 60 or over, or is disabled

WV Works

- \$2,000 regardless of the number in the AG

- 6) West Virginia Income Maintenance Manual § 11.4 AA (3) states:

IRA, KEOGH, Simplified Employer Pension Plan or Similar Plans

Food Stamps, WV Works and AFDC Groups: The amount counted is the total cash value of the account or plan, minus the amount of the penalty, if any, that would be applied for the early withdrawal of the entire amount.

- 7) West Virginia Income Maintenance Manual § 20.2 (for Food Stamps) and 20.3 (for WV Works) states:

When an AG has been issued more Food Stamps and cash assistance that it was entitled to receive, correction action is taken by establishing a claim for the overpayment. The claim is the difference between the entitlement of the AG and the allotment the AG was entitled to receive.

There are three (3) types of repayment claims that are established:

- Agency Errors - Failure to take action or computation errors by the Department
- 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
- Fraud Claims – Claims established as a result of an investigation by the Criminal Investigation Unit

VIII. CONCLUSIONS OF LAW:

- 1) Claimant had an IRA account worth over \$3,000 at the time of the household's application for Food Stamp and WV Works benefits in July 2004. The balance of the IRA never dropped below \$3,000 from July 2004 – December 2007.
- 2) The asset limit for Food Stamps and WV Works is \$2,000 and an IRA account is a countable asset for both programs. The application of the 10% early withdrawal penalty would not have reduced the balance to below \$2,000. Claimants total household assets for the period of the repayment claim of July 2004 – December 2007 exceeded the \$2,000 limit.
- 3) Per policy, Claimants were not eligible to receive Food Stamps or WV Works during the time period Claimant had his IRA account and are required to repay any benefits received for which they were not entitled.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to establish Food Stamp repayment claim of \$15,522 and a WV Works repayment claim of \$2,909.

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, 2008.

Kristi Logan
State Hearing Officer