



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P. O. Box 6165  
Wheeling, WV 26003

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

October 14, 2008

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 26, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to establish a 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 that when an assistance group (AG) has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing a claim. All claims, whether established as a result of an error on the part of the Agency or the household, are subject to repayment. (West Virginia Income Maintenance Manual '10.4, C & 20.2).

The information submitted at your hearing reveals that the Department established a \$262 unintentional Food Stamp claim against your household for the month of April 2008 because the Department determined they had incorrectly excluded child support income from consideration on your case. When your case was reviewed in May 2008 the department's worker chose to exclude the child support income you reported because a child support modification hearing was scheduled for June and all indications were that this child support money would be modified to either the amount of the Social Security Disability the children were receiving or zero. WV Income Maintenance policy provides direction to the department's workers which indicates that income that cannot be reasonably anticipated for the certification period is to be excluded. The worker's actions in excluding this income appears to have been the correct action based on policy.

It is the decision of the State Hearing Officer to reverse the proposal of the Agency to establish and seek collection of an **unintentional** Food Stamp claim in the amount of \$262 for the month of April 2008.

Sincerely,

Melissa Hastings  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review      Teresa Smith, DHHR

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

\_\_\_\_\_,  
**Claimants,**

**Action Number: 08-BOR-1981**

**v.  
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 September 26, 2008 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 September 26, 2008 on a timely appeal filed August 26, 2008.

**II. PROGRAM PURPOSE:**

The program entitled **Food Stamps** is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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 food coupons 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 Aunt  
Teresa Smith – Repayment Investigator, DHHR

Presiding at the Hearing was Melissa Hastings, 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 Agency is correct in their proposal to establish and seek repayment of an unintentional Food Stamp Claim for the period June 2008.

#### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual ' 1.2, 10.3, 10.4 & 20.2.  
7 CFR ' 273.18 - Code of Federal Regulations.

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- DHS-1 Case Comments dated 05/15/08 through 07/07/08 consisting of 6 pages
- DHS-2 Computer printout of child support disbursements for 06/06/08
- DHS-3 Memo dated June 26, 2008 concerning Child Support Income Returned to the Absent Parent
- DHS-4 Food Stamp Claim Determination form ESFS5 for time period June 2008
- DHS-5 Notification of FS Overissuance dated 08/20/08
- DHS-6a WV Income Maintenance Manual Section 1.2 Client Responsibility
- DHS-6b WV Income Maintenance Manual Section 1.4 Repayment and Penalties
- DHS-6c WV Income Maintenance Manual Section 10.3 Chart of Income Sources
- DHS-6d WV Income Maintenance Manual Section 20.2 Food Stamp Claims and Repayment Procedures
- DHS-7 Hearing Summary dated September 26, 2008

##### **Claimant's Exhibits**

- C-1 Court Order from the Family Court of [REDACTED] County entered June 27, 2008
- C-2 Photocopies of two Money Gram receipts dated June 12, 2008 in the amount of \$500 and \$330 respectively
- C-3 Notice of Audit from the Bureau of Child Support Enforcement dated August 20, 2008
- C-4 Monthly notice of support collected dated August 30, 2008

#### **VII. FINDINGS OF FACT:**

- 1) Evidence and testimony provided by the department representative indicates that claimant came in for a review of her Food Stamp case on May 15, 2008. (DHS1). At that time she reported to the worker that her children were receiving monthly Social Security Disability payments as the children's father was now on Social Security Disability. In addition, the claimant reported that for the months of March, April and May 2008 she had received monies from the Bureau of Child Support Enforcement because they had garnished her ex-husband's Social Security Disability benefits for the original court ordered amount of support. She reported that her ex-husband was unaware of the need to seek a modification of the original support order and had taken action to do

so. She reported that she had returned this garnished money to her ex-husband and provided receipts. She also reported that the modification hearing was scheduled for June 2008 and the expectation was that the child support obligation would be altered to reflect the amount of the monthly Social Security Disability payments the children were receiving. As a result of this information the department's worker projected the household income for June 2008 using only the Social Security Disability income the claimant anticipated receiving.

- 2) A peer review was conducted on the claimant's case on June 26, 2008 (DHS1) and a determination made that the certifying worker had incorrectly excluded the child support income (garnishment of the ex-husband's Social Security Disability). A clarification memo was sent to the department's Income Maintenance Policy Unit. (DHS3). The reply received reads as follows:

Unless the client is receiving WV WORKS and has redirected the income due to this program's requirements, the entire amount of the child support she received as current payments is counted as income. The client is not entitled to a deduction for the amount that she returned to the father.

My understanding is that if the court order is modified, it would only affect **future payments**. There is no reason to believe that she would be required to repay this CS to BCSE.

- 3) As a result of this clarification, a referral was made to the Food Stamp repayment unit. A Food Stamp claim was established for the month of June 2008 in the amount of \$262. (DHS4)
- 4) Documentary evidence (DHS2) provided by the department reveals that the claimant did receive child support monies in June 2008.
- 5) Documentary evidence (C2) provided by the claimant reveals that she returned this money to her ex-husband on or about June 12, 2008.
- 6) The court order entered **June 27, 2008** (C1) reveals that a modification hearing was held June 10, 2008 with the Bureau of Child Support Enforcement and the claimant in attendance. The hearing was as a result of a petition for modification filed by the Bureau of Child Support Enforcement on **March 28, 2008** in light of the Social Security Disability benefits being paid to the children. The order's findings of fact and conclusions of law makes the determination that **effective April 1, 2008** the ex-husband's support obligation was reduced to zero.
- 7) A Notice of Audit (C3) dated August 20, 2008 received by the claimant indicates a total balance owed for child support as \$2245.19.
- 8) West Virginia Income Maintenance Manual § 1.2E (**DHS6a**) states:

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.

- 9) West Virginia Income Maintenance Manual § 20.2 (**DHS6d**) states:  
When an AG (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 (UPV) or Intentional Program Violation (IPV) claim. The claim is the difference between the entitlement the assistance group received and the entitlement the assistance group should have received.
- 10) West Virginia Income Maintenance Manual § 20.2,C (**DHS6d**) states:  
There are 2 types of UPVs, 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
- 11) West Virginia Income Maintenance Manual§ 10.3 (**DHS6c**) states:  
Current child support is considered unearned income for the Food Stamp Program  
Child Support arrearages are not considered income for the Food Stamp Program but treated as non-recurring lump sum.
- 12) West Virginia Income Maintenance Manual§10.4 states:  
Eligibility is determined and benefits are issued on a monthly basis. Therefore, it is necessary to determine a monthly amount of income to count for the eligibility period.

For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the AG. For all cases, income is projected\*; past income is used only when it reflects the income the client reasonably expects to receive.

## **VIII. CONCLUSIONS OF LAW:**

- 1) West Virginia Income Maintenance Manual section 20.2 indicates that when there has been an overissuance of Food Stamp benefits, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or an Intentional Program Violation (IPV) Claim. There are two types of Unintentional Program Violations, an error made by the Department or an error made by the client.
- 2) West Virginia Income Maintenance Manual section 1.2 indicates that the client is responsible for reporting information about their circumstances so the agency can make correct decisions on their cases.
- 3) West Virginia Income Maintenance Manual section indicates that the worker must determine income on a monthly basis when determining eligibility and that past income is projected only when it reflects the income the client reasonably expects to receive.

- 4) Evidence is clear that the claimant reported for her review of her Food Stamp case and honestly reported the facts concerning her income to her worker. Based on the information provided to the worker by the claimant, the worker projected the claimant's income for the upcoming certification period utilizing only the Social Security Disability payments being received. The worker justified excluding the child support income from consideration due to the impending child support modification hearing that was to be held in June 2008 in which it was anticipated that the child support would be eliminated or lowered to the amount of the Social Security Disability payments being received by the children.
- 5) The results of the child support modification hearing confirm that the worker's judgment in this case was correct and policy was applied correctly.
- 6) The policy clarification received from the state's policy unit based its decision on the assumption that any modification to the child support obligation would not be retroactive. In this case the court order was entered on June 27, 2008 and was effective back to April 1, 2008.

**IX. DECISION:**

It is the decision of the State Hearing officer to REVERSE the Agency's proposal to establish and seek repayment of a \$262 unintentional Food Stamp claim on the household for the month of June 2008.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 14th Day of October, 2008.**

---

**Melissa Hastings  
State Hearing Officer**