



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 13, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 14, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to establish a Food Stamp repayment claim against your household.

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 that when an assistance group 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 Chapter 20.2). Policy also states that for simplified reporting cases, the AG must at the end of each month consider all income sources, and when this total exceeds the maximum allowed, the AG must report the change by the 10th day of the following month. (WV Income Maintenance Manual Chapter 2.2.B.1.a)

Information submitted at your hearing reveals that your total household countable income exceeded the 130% FPL in July 2007. You reported this change timely on July 30, 2007; therefore, no overpayment occurred in August 2007.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency to establish and seek collection of a Food Stamp claim in the amount of \$433.00 for the month of August 2007.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Vickie Adkins, [REDACTED] DHHR

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

_____ ,

Claimant,

v.

Action Number: 07-BOR-2543

**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 28, 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 February 14, 2008 on a timely appeal filed October 15, 2007.

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 domestic partner, witness
Vickie Adkins, Repayment Investigator, DHHR

Presiding at the hearing was Cheryl Henson, 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 its proposal to establish and seek repayment of a Food Stamp claim.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 2.2.B.1.a, and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 Case Comments from Rapids dated July 30, 2007
- DHS-2 Rapids screen IQFS dated October 12, 2007
- DHS-3 Rapids screen EFAD dated October 12, 2007
- DHS-4 West Virginia Income Maintenance Manual Section 2.2
- DHS-5 WV Income Maintenance Manual Section 20.2
- DHS-6 Copy of Rights and Responsibilities dated March 2, 2007
- DHS-7 Notification letter dated March 16, 2007
- DHS-8 Email from Customer Service Center dated February 15, 2008

Claimant's Exhibits:

- C-1 Income verification and notification letters

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving food stamps on March 16, 2007 when the Department sent her a notification letter (D-7) indicating the following:

ACTION: Your Food Stamps will increase from \$342.00 to \$433.00 effective 4/01/07.

REASON: Income decreased.

The following is the list of individuals who are eligible for this benefit. If an individual has been added to the Assistance Group, their name will appear here. If an individual's income has increased or decreased, this will be stated followed by the amount it increased or decreased by. If they are affected by the ABAWD 36 month tracking policy, the tracking period will be stated after their name

_____ FROM 11/2006 to 10/2009
_____ – Income decreased. \$138.33
_____ FROM 11/2006 to 10/2009 – Income
decreased. \$920.20

You must contact this office and report if your total household income increases to more than \$2167.00 per month. Gross income is the amount of all unearned income received in a month, plus the amount of earned income before any taxes or other withholdings are taken out. This includes the income of all individuals who live in your home, whether or not they are included in your Food Stamp case.

- 2) On July 30, 2007 the Claimant emailed the Department to report that her domestic partner started a new job. The Department's Customer Service Center processed this reported change on July 30, 2007 and made a recording in the Rapids Case Comments section (DHS-1). The recording states:

Received email with a new job. Called and spoke with _____ who stated that _____ gets \$908.80 semi-monthly gross. Updated afei She also stated that he started working on 06/15/07 Updated anae and aibp. Ran SFED FS closed for overincome. Sending case to appropriate unit. Case is confirmed. MN and MQCA still passing

Received email stating that _____ has lost her job at HMS. Tried calling no answer. Took client statement as still over the income for FS. Ran sfed Mn and MQCA still passing.

- 3) The Department provided evidence (DHS-1) that the Claimant's domestic partner began a new job June 15, 2007 and is paid \$908.80 semi-monthly, and that the Claimant's job had ended at some point on or before July 30, 2007. The Claimant reported the changes July 30, 2007 to the Customer Service Center. The Department also showed (DHS-7) that in March 2007 one of the Claimant's children was actively receiving income in the amount of \$138.33 per month.
- 4) The Claimant submitted evidence showing that her domestic partner received gross income of \$1041.67 on July 16, 2007 and another check in the amount of \$1000.00 gross on July 30, 2007. It appears the July 30, 2007 check may have been payment for something other than wages as no hours worked are listed. The July 16, 2007 check included pay for wages from July 1, 2007 through July 15, 2007. It showed a year-to-date total of \$3125.01. By deducting the total gross pay of \$1041.67 received on July 16, 2007, this shows the Claimant's domestic partner received a total of \$2083.34 at some point before this date. No evidence was provided by the Department to show when the Claimant "received" this money; therefore, it could have been received in June or possibly July 2007.

- 5) West Virginia Income Maintenance Manual Chapter 2.2.B.1.a states in pertinent part:

a. Simplified Reporting AG's

All AG's subject to the 130% FPL income reporting requirements are certified for 6 months and must report when the total gross earned and unearned income of the AG and all other individuals who reside with the AG exceeds the AG's gross income limit. This must be reported no later than the 10th calendar day of the month following the month in which the change occurs.

EXAMPLE: An AG consists of a mother and 2 children and is certified for 6 months. The AG is required to report when the household's income exceeds the gross income limit for a 3 person AG. In the 3rd month, the children's father moves into the household. At the end of each month, the AG must consider all income sources. The father's income, when combined with the Ag's, exceeds the limit for the original 3 person AG. The AG must report this by the 10th day of the 4th month.

- 5) West Virginia Income Maintenance Manual Chapter 20.2 states that when an 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 [emphasis added].
- 6) West Virginia Income Maintenance Manual Chapter 20.2, C (D-3) states that there are two types of Unintentional Program Violations- client errors and agency errors. A UPV is established when:
 - An error by the Department resulted in the over issuance.
 - An unintentional error made by the client resulted in the over issuance

This section states that Agency errors include failure to take prompt action and computation errors. Client errors occur when the client fails to provide accurate or complete information.

VIII. CONCLUSIONS OF LAW:

- 1) The Department provided evidence (DHS-1) that shows the Claimant's domestic partner started a new job June 15, 2007 and is paid \$908.80 semi-monthly for a total of \$1817.60 expected gross income from the new job. The Claimant reported the change July 30, 2007. The Department provided evidence (DHS-3) that they counted \$2627.12 as the total household gross income on July 30, 2007 in determining continued eligibility. The difference in the amount of gross income reported for the new job and the amount counted by the Department is \$809.52. No evidence was provided to clarify how the other \$809.52 in gross income was obtained or whether this was an accurate calculation. There is some evidence (DHS-7) that suggests one of the children had some type of ongoing income in March 2007 amounting to \$138.33. There is some question whether the Department removed the earned income of the Claimant as reported before determining eligibility, and the Department failed to provide any further documentation to clarify their calculations.
- 2) Evidence submitted by the Claimant clearly shows that \$2083.34 in year-to-date earnings was received prior to the July 16, 2007 pay; however, this income will not be used in calculations for June 2007 since no clear evidence was presented to show date of receipt. The earnings may have been paid in July 2007.
- 2) Policy dictates that in cases of simplified reporting such as this, the Assistance Group (AG) is required to report when the family's total gross earned and unearned income exceeds 130% of the Federal Poverty Level (FPL). In this case, the Claimant was told (DHS-7) that she must contact the office and report if her total household income increases to more than \$2167.00 per month. The notification letter went on to explain that "gross income is the amount of all unearned income **received** (my emphasis) in a month, plus the amount of earned income before any taxes or other withholdings are taken out. This includes the income of all individuals who live in your home, whether or not they are included in your Food Stamp case."
- 3) Policy also stipulates that in simplified reporting cases, the AG is required to assess the total household income "at the end of each month" to determine whether it exceeds the maximum allowed, and required to report such changes by the 10th day of the following month.
- 4) Evidence is clear that the Claimant did report the July 2007 household income on July 30, 2007, which is clearly within the timeframe policy allows. No evidence was provided to indicate the family's income for June 2007 exceeded the allowable maximum; therefore the Claimant timely reported the change.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to establish and seek collection of a Food Stamp repayment claim of \$433.00 based on a Client error.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of March, 2007.

**Cheryl McKinney
State Hearing Officer**