



**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**

April 29, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 22, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to establish an Agency Unintentional 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 20.2). Income intended for the client, but received by another person for the care and maintenance of the individual is counted as income. (WV Income Maintenance Manual 10.4.)

The information, which was submitted at your hearing, revealed that your household received an over issuance of Food Stamps during the months of August 2007 thru January 2008 due to an agency error.

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 \$1084. and to seek repayment of the claim from your household.

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,

Action Number: 08-BOR-766

v.

WV DHHR

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 22, 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 April 22, 2008 on a timely appeal, filed February 1, 2008.

It should be noted here that repayment and recoupment have been postponed pending a hearing decision.

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
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 Department is correct in their actions to establish an Agency Error Food Stamp claim and to collect the overpayment of Food Stamps from the claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy § 9.1, 10.3, 10.4, and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp Claim Determination and calculations
- D-2 Verification of SSI income
- D-3 WV Income Maintenance Manual Policy §9.1
- D-4 WV Income Maintenance Manual Policy §10.3
- D-5 WV Income Maintenance Manual Policy §20.2
- D-6 Notification of over issuance dated January 23, 2008

VII. FINDINGS OF FACT:

- 1) The claimant applied and was approved for Food Stamp benefits in August 2007. She reported to the caseworker that both of her son's receive SSI income. She reported that her mother has legal custody of her oldest son and that she is the payee for his SSI income. The claimant's mother and father live in the same household with her and her two sons. Her parents are not included in the Food Stamp benefits with the claimant however; both sons are included in the Food Stamp benefit group.
- 2) The claimant advised the worker at application time that her mother does not give her the SSI income. The worker excluded this son's SSI income when calculating the Food Stamp benefit.
- 3) In January 2008, the claimant returned to the DHHR office to complete a review of her Food Stamp case. The worker completing the review determined that the older son's SSI income is to be counted as Food Stamp income. The Food Stamps were decreased due to this included income and a referral was made to the Claims and Collection unit.

- 4) The Claims and Collection Unit established a Food Stamp overpayment claim of \$1,084. for the months of August 2007 through January 2008.
- 5) The Repayment Investigator issued a notice of this claim on January 23, 2008. This notice indicated that the error was a CLIENT ERROR claim in the amount of \$1084. Testimony by the Department indicated that the overpayment was due to an agency error.
- 6) The claimant testified that her mother uses her son's SSI check to pay household expenses, to purchase items her son needs and to purchase food. She reports that the household eats together however, the food that she purchases with her Food Stamp benefits is kept separate. She and her sons do not eat the same food that her parents eat.
- 7) **WV Income Maintenance Manual §10.3**
VVV. SSI (Supplemental Security Income) is counted as unearned income for Food Stamps.
- 8) **WV Income Maintenance Manual §9.1**
Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent.
- 9) **WV Income Maintenance Manual §10.4:**
Withheld income
b. From Unearned Income – Treatment of unearned income depends on the reason it is being withheld and the government program, if any, involved.

Unavailable Income
Income intended for the client, but received by another person with whom he does not live, when the individual receiving this income refuses to make it available, is excluded.

Income Received For a Non-Income Group Member
Income received by a member of the Income Group, which is intended and used for the care and maintenance of an individual whose income is not used in determining the eligibility or benefit level of the payee's AG, is excluded as income.
- 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 in Chapter 10.4 provides that income received for the care and maintenance of a person who would not be included in the benefit group would not be counted as income for that group. This policy dictates that if the grandparents of this boy were to apply for Food Stamps for themselves, the SSI income that they receive for their grandson would not be counted as income in their own case. It therefore, must be counted as income to the benefit group that includes the grandson.
- 2) Policy also in Chapter 10.4 dictates that income intended for the client, but received by another person with whom he does not live, when the individual receiving this income refuses to make it available, is included as income. In this policy, the statement, “with whom he does not live”, clearly is referring to the benefit group in which he would not be included. The grandparent may be refusing to make the income directly available to the grandson’s mother however; the income is used for the care and maintenance of the grandson who is in this claimant’s Food Stamp benefit group. SSI income is for the use of the grandson. This Hearing Officer assumes that the food that the grandmother is purchasing with the SSI income is for the use of the grandson.
- 3) It is clear that this child’s SSI income is intended to be counted as Food Stamp income. It is clear that this income used for the care and maintenance of a grandson who is in a separate Food Stamp benefit group would not be counted as income in a Food Stamp case of the grandparents. The income is countable income for the claimant’s case.
- 4) Policy 20.2 identifies an Agency Unintentional Error claim as a claim that is collectable against the assistance group who received the over issuance.

IX. DECISION:

I find that the claimant’s household was over issued Food Stamp benefits during the months of August 2007 thru January 2008 in the amount of \$1084. I rule to **uphold** the agency in its action to establish an Agency Error claim and to collect the overpayment from the claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of April 2008.

Sharon K. Yoho
State Hearing Officer