



**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**

May 29, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 14, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to establish an Agency 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 ' 10.4, C & 20.2).

The information, which was submitted at your hearing, revealed that your household received an over issuance of Food Stamps during the months of October 2007 thru February 2008.

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 \$680. 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-923

**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 an agreed upon telephone fair hearing concluded on May 14, 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 May 14, 2008 on a timely appeal, filed February 15, 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
_____ claimant's aunt

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 Agency was correct in their actions to establish and collect an overpayment of Food Stamps.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy §9.1, and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp Claim Determination
- D-2 Computer screens showing benefits issued
- D-3 Case Comments dated February 5, 2008
- D-4 West Virginia Income Maintenance Manual Policy § 20.2
- D-5 Notification of claim dated February 12, 2008

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of the Food Stamp program in September 2007 when she reported to the Food Stamp Employment and Training (FSE&T) worker that her son was attending college full time. This worker failed to make this knowledge known to the Food Stamp caseworker.
- 2) The caseworker became aware during a review that the claimant had reported on July 23, 2007 that her son was going to start college in the fall. The worker also found that the claimant had also reported this to the FSE&T worker.
- 3) The Department had failed on two occasions to respond to the report of the college student situation. On February 5, 2008, the caseworker determined that the claimant's son was attending college full time and was not employed. This worker removed the son from the Food Stamp benefits and referred the case for repayment.
- 4) The Claims and Collections unit established a Food Stamp Agency Error claim for the months of October 2007 thru February 2008. The over issuance for this period was calculated to be \$680. A notice of this over issuance was sent to the claimant on February 12, 2008.

- 5) The claimant requested a hearing on February 15, 2008. She testified that she was not aware of the student policy and does not agree with it. She believes that students should not be required to be employed, and that they should be able to devote all of their time to their studies. She states that the Department should have acted on the information sooner. She objects to her being required to repay the over issuance when it was due to the Department's error for not applying the policy that was in place.
- 6) **WV Income Maintenance Manual § 9.1:**
Food Stamp Eligibility Determination groups:
Student participation in the food Stamp Program is limited to individuals who meet the criteria in item b.
- He is attending school less than half time.
 - He is enrolled full-time in a school or training program which does not meet the definition of an institution of higher education. An institution of higher education is a business, technical, trade or vocational school that normally requires a high school diploma or its equivalent for enrollment.
 - He is participating in an on-the-job training program. This does not include the practical experience requirements, which may be part of some courses of study, i.e., student teaching, internships, etc.
 - The student is employed at least 20 hours per week and is paid for the employment.
- 7) **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 is clear in Chapter 9.1 that a person enrolled in an Institution of Higher learning attending more than half time must be classified as a full time student for Food Stamp eligibility purposes. Testimony confirms that the claimant's son was a full time college student during the months of September 2007 thru February 2008.
- 2) Testimony supports that the claimant's son was not employed at least 20 hours per week in paid employment or participating in an on the job training program. He therefore, did not qualify to be included in the Food Stamp benefits
- 3) Policy 20.2 identifies an Agency Error claim as a claim that is collected 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 October 2007 thru February 2008. I rule to **uphold** the agency in its actions to establish an Agency Error Food Stamp claim for \$680. and to collect the overpayment from the claimant's assistance group.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of May 2008.

**Sharon K. Yoho
State Hearing Officer**