



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

October 12, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 16, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to establish a Supplemental Nutrition Assistance Program (SNAP) repayment 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 Supplemental Nutrition Assistance Program (SNAP) is based on current policy and regulations. Some of these regulations state that when an assistance group has been issued more SNAP benefits 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 Department or the household, are subject to repayment. (West Virginia Income Maintenance Manual, Chapter 20.2 and 7 CFR § 273.18 - Code of Federal Regulations).

Information submitted at your hearing reveals that the Department incorrectly deducted the Standard Utility Allowance from your income during the period February 1, 2010 through February 28, 2010, resulting in an over-issuance of SNAP benefits in the amount of \$100. While you contend that you should not be responsible to repay over-issued SNAP benefits caused by an agency error, all SNAP overpayments, whether caused by the Department or the household, are subject to repayment.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to establish and seek collection of a SNAP repayment claim in the amount of \$100 for the period of February, 2010.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

CC: Erika Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

Action Number: 10-BOR-1258

-----,
Respondent,

v.

**West Virginia Department of
Health and Human Resources,
Movant.**

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on October 12, 2010 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 (DHHR.) This fair hearing was convened on June 16, 2010, on a timely appeal filed May 6, 2010.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (SNAP) 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:

-----, Respondent
Brian Shreve, Repayments Investigator, WV DHHR

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

This hearing was conducted at the WV Department of Health and Human Resources, [REDACTED] County Office in [REDACTED] WV.

The Hearings Officer placed all participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Agency is correct in its proposal to establish and seek repayment of a SNAP repayment claim.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 10.4, Chapter 6.3 and Chapter 20.2.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 ES-FS-5, Food Stamp Claim Determination – February 2010.
- D-2 Computer system print-out of Respondent's Mail-In Review Form, dated December 21, 2009.
- D-3 Print-out of case comments made in Respondent's SNAP benefits case on January 9, 2010 and January 26, 2010.
- D-4 Copy of rent receipt and written statement verifying that utilities are included in the rent, submitted to the WV DHHR by Respondent on January 25, 2010.
- D-5 Print-out of calculations from benefits-issuance computer system indicating SNAP allotment determination for February 2010.
- D-6 Copy of Income Maintenance Manual Chapter 10.4.B.7.b, showing the SNAP benefit Standard Utility Allowance deduction.
- D-7 Copy of Income Maintenance Manual Chapter 6.3.C.2, describing which SNAP benefit cases do not require advance notice of adverse action.
- D-8 Print-out from benefits-issuance computer system showing dates in January 2010 in which benefits for February 2010 are calculated.
- D-9 Copy of Income Maintenance Manual Chapter 20.2 showing SNAP overpayment claims and repayment procedures.
- D-10 Copy of Notification of Supplemental Nutrition Assistance Program (SNAP) Over-issuance, addressed to Respondent and dated January 12, 2010.

VII. FINDINGS OF FACT:

- 1) On or about April 9, 2010, Respondent was notified of a Supplemental Nutrition Assistance Program (SNAP) over issuance. (Exhibit D-10.) This notice states, in pertinent part:

We have determined that you were issued more SNAP benefits than you were eligible to receive during the period 2/1/10 to 2/28/10 because of incorrect income disregards/deductions.

This notice states further that an Agency Error claim for \$100 has been established against the Respondent's household.

- 2) Department's representative, a State Repayment Investigator, presented evidence in the form of a mail-in review form (Exhibit D-2) and case recordings by an Economic Services worker

(Exhibit D-3) that indicate Respondent reapplied for SNAP benefits on January 9, 2010. On January 26, 2010, the same Economic Services worker recorded that Respondent submitted verification that his monthly rent was \$400, and utilities were included. (Exhibit D-4.) Department's representative submitted a print-out of calculations from the WV DHHR's benefits-issuance computer system (Exhibit D-5), which indicates that Respondent received a deduction from his monthly income for paying \$400 per month in rent, and a \$400 deduction for the Standard Utility Allowance (SUA.) This deduction applied to Respondent's case resulted in his receiving \$116 in SNAP benefits for the month of February, 2010, when he was only entitled to \$16.

3) On January 20, 2010, a change center worker initiated appropriate action to correct the over-issuance. Part of the corrective action included a referral to the Investigations and Fraud Management (IFM) unit of the DHHR. (Exhibit D-1.)

4) Department's representative, an Investigations and Fraud Management investigator, testified that he determined this was a case of worker error and not an Intentional Program Violation on Respondent's part. He further testified that the error occurred because the worker who initially processed Respondent's food stamp review failed to remove the SUA. (Exhibit D-3, Exhibit D-4.) He testified that the date of January 26, 2010, was after establishment of the SNAP benefits for February 2010. (Exhibit D-8.) Therefore, it was not possible to change the amount of Respondent's February SNAP benefits. Department's representative testified that he completed a SNAP Overpayment Claim Determination (Exhibit D-1) which indicated Respondent was overpaid SNAP benefits in the amount of \$100 for February 2010.

5) West Virginia Income Maintenance Manual, Chapter 10.4.B.7.b, (Exhibit D-6) states in pertinent part:

[Assistance groups] that are obligated to pay from their own resources a utility expense that is billed separately from their shelter costs are eligible for an SUA deduction. [Assistance groups] which are not obligated to pay any utility cost are ineligible for the SUA . . .

6) West Virginia Income Maintenance Manual, Chapter 20.2, (Exhibit D-9) states in pertinent part:

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.

7) West Virginia Income Maintenance Manual, Chapter 20.2,C states in pertinent part:

There are 2 types of UPV's, client errors and agency errors.

A UPV claim 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.

- 9) Respondent did not contest the facts in this case. Respondent indicated that he applied for and accepted benefits in good faith that he was receiving the amount to which he was entitled. He did not feel that he should be required to pay back SNAP benefits that he received incorrectly, since the error was the result of a mistake on an Income Maintenance Worker's part.

VIII. CONCLUSIONS OF LAW:

- 1) The evidence reveals that the Department incorrectly allowed a deduction for the Standard Utility Allowance on Respondent's income in calculating his SNAP benefit amount for the month of February 2010. This is clearly an Unintentional Program Violation (UPV) based on an Agency error.
- 2) Pursuant to policy found in Chapter 20 of the West Virginia Income Maintenance Manual, the Department has correctly proposed repayment of the over-issued SNAP benefits, as policy makes no distinction between claims resulting from errors made by the Respondent or the Agency. The claim is the difference between the entitlement the assistance group received and the entitlement the assistance group should have received.
- 3) The Department's proposal to establish and seek collection of a repayment claim is therefore affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to establish and seek collection of a SNAP repayment claim in the amount of \$100 for the period February 1, 2010 through February 28, 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Respondent's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of October, 2010.

**Stephen M. Baisden
State Hearing Officer**