



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

March 16, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 10, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to establish a Supplemental Nutrition Assistance Program (SNAP) 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 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 Agency or the household, are subject to repayment. (West Virginia Income Maintenance Manual Chapter 20.2)

Information submitted at your hearing reveals that you received SNAP benefits to which you were not entitled as the result of an Agency error. Therefore, a repayment claim should be established.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to establish and seek collection of a SNAP claim in the amount of \$480.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Samantha Close, Repayment Investigator, DHHR

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

-----,

Respondent,

v.

Action Number: 11-BOR-467

**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 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 convened on March 10, 2011 on a timely appeal filed January 24, 2011.

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 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:

-----, Respondent
-----, mother of Respondent's boyfriend
Samantha Close, Repayment Investigator, DHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department is correct in its proposal to establish and seek repayment of a SNAP claim.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 9.1 and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Benefit Recovery Referral information
- D-2 West Virginia Income Maintenance Manual Chapter 9.1
- D-3 Food Stamp Allotment Determination information
- D-4 Case Comments dated June 17, 2010, June 29, 2010 and September 15, 2010
- D-5 Food Stamp Claim Determination and Food Stamp Claim Calculation Sheets

I. FINDINGS OF FACT:

- 1) The Respondent received Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, benefits during the period of June 2010 through September 2010.
- 2) DHHR Repayment Investigator Samantha Close indicated that the Department approved the Respondent for benefits in error as she purchases and prepares meals with her boyfriend, -----. Ms. Close testified that ----- is under age 22 and resides with his parents, therefore the Respondent and her boyfriend must be included in an Assistance Group with his parents. According to Case Comments dated September 15, 2010 (D-4), the error was discovered on September 14, 2010 when ----- completed a Medicaid application.
- 3) The Repayment Investigator testified that the Respondent was eligible for zero SNAP benefits for the period of June 2010 through September 2010 as total household income was excessive. The error resulted in a \$480 SNAP over issuance as indicated on Food Stamp Claim Calculation Sheets in Exhibit D-5.
- 4) Both the Respondent and -----, -----'s mother, testified that the Respondent was told she would not have to repay the SNAP benefits because the error was caused by the Agency worker.

The Repayment Investigator contended that a claim must be established regardless of whether the error is considered an Agency or client error.

- 5) West Virginia Income Maintenance Manual Chapter 9.1, A, (D-2) provides the following information regarding individuals who must be included in the same SNAP Assistance Group (AG):

The SNAP AG must include all eligible individuals who both live together and purchase and prepare their meals together...

Individuals or groups of individuals living with others, but who customarily purchase and prepare meals separately, are an AG.

Customarily purchasing and preparing food separately means that, during the certification period, the client actually purchases and prepares his food separately from the others in the household over 50% of the time, except for an occasional shared meal. This occasional sharing of food does not interfere with his separate AG status.

EXCEPTION: The following individuals who live together must be in the same AG, even if they do not purchase and prepare meals together...

- Children Under Age 22, Living With a Parent

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.

In the instance of shared custody, when the child is legally considered to reside with each parent equal amounts of time (50/50), the parents must decide where the child “lives.” If no one is receiving any benefits from the Department for the child, it is assumed that the living arrangements are not questionable and the child is added to the AG that wishes to add him. If the child is listed in another AG or the parent wishes to add the child to his AG, the parents must agree as to where the child “lives” and, ultimately, to which AG he is added. Where the child receives the majority of his meals is not relevant.

- 6) West Virginia Income Maintenance Manual Chapter 20.2 states that when an Assistance Group has been issued more SNAP benefits 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].

- 7) West Virginia Income Maintenance Manual Chapter 20.2, C 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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that children under age 22 living with a parent must be included in the same SNAP Assistance Group as the parent/parents.
- 2) The Respondent and her boyfriend – who was less than 22 years of age - were residing with his parents when the Respondent applied for SNAP benefits in June 2010. A Department worker approved the SNAP application, allowing the Respondent and her boyfriend to be included in an Assistance Group exclusive of his parents. While the SNAP over issuance was not the fault of the Respondent, policy requires that unintentional over issuances resulting from Agency errors be repaid.
- 3) The Department’s proposal to establish and seek collection of a repayment claim based on an Agency error is, therefore, affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Agency’s proposal to establish and seek collection of a SNAP repayment claim of \$480.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16^h Day of March, 2011.

**Pamela L. Hinzman
State Hearing Officer**