



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Earl Ray Tomblin  
Governor

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

February 21, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 16, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to establish a Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, 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 SNAP is based on current policy and regulations. Some of these regulations state that when an assistance group has been issued more Food Stamp (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 the hearing reveals that an Agency error - failure to count unemployment income reported by you at the time of application - resulted in an overpayment in SNAP benefits. Pursuant to SNAP policy, all SNAP overpayments, whether caused by the Agency or the household, are subject to repayment.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to establish and seek collection of a SNAP (Food Stamp) repayment claim in the amount of \$282 for the period of September 2011 through November 2011.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review  
Samantha Close, RI, DHHR

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

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**Claimant,**

**v.**

**Action Number: 12-BOR-411**

**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 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 February 16, 2012 on a timely appeal filed January 11, 2012.

**II. PROGRAM PURPOSE:**

The purpose of the Supplemental Nutrition Assistance Program (SNAP), formerly 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  
Samantha Close, Repayment Investigator (RI), WVDHHR (participated telephonically)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department is correct in its proposal to establish and seek repayment of a SNAP (Food Stamp) claim.

#### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual, Chapter 10.3, 10.4, and 20.2.  
7 CFR § 273.18 - Code of Federal Regulations.

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- D-1 Food Stamp (SNAP) Claim Determination, Food Stamp Allotment Determination (9/1/11 to 11/30/11), Food Stamp Claim Calculation Sheet and Food Stamp Allotment Determination beginning 12/1/11
- D-2 SNAP Issuance History – Disbursement (8/15/11 to 1/6/12)
- D-3 Claimant's Unemployment Benefit Payment History
- D-4 Departmental Case Comments for period 8/15/11 – 10/7/11
- D-5 Combined Application and Review Form (CAF) and Rights and Responsibilities signed by the Claimant on 8/15/11
- D-6 West Virginia Income Maintenance Manual Chapters 10.3, 10.4 and 20
- D-7 Notification of Supplemental Nutrition Assistance Program (SNAP) Overissuance dated January 9, 2012

#### **VII. FINDINGS OF FACT:**

- 1) On or about January 9, 2012, the Claimant was notified of a Supplemental Nutrition Assistance Program (SNAP) over issuance (D-7). This notice indicates that an Agency error resulted in an overpayment during the period of 9/1/11 to 11/30/11 in the amount of \$282 based on a failure to count unearned income.
- 2) The Department presented evidence to indicate the Claimant was evaluated for SNAP eligibility on August 15, 2011. According to documentation found in Case Comments (D-4), the Claimant reported that her unemployment benefits (\$220 per week) were expected to begin on August 22, 2011.
- 3) The Claimant's SNAP benefits were approved, however, according to information found in Exhibits D-1 and D-2, SNAP benefits were issued for September, October and November 2011 based on \$0 monthly income.

- 4) Exhibit D-3 was submitted by the Department to show that the Claimant's first unemployment check was issued to her on August 21, 2011, and that she continued to receive \$220 per week unemployment (unearned) income during the period for which repayment is proposed. The Department cited Exhibit D-1 (Food Stamp Claim Determination as well as the Food Stamp Allotment Determinations) to show that the Claimant was overpaid \$282 in SNAP benefits during the period of September, October and November 2011 due to an Agency error.
- 5) The Department submitted Exhibit D-5 (Combined Application and Review Form, accompanied by the Rights and Responsibilities) signed by the Claimant at the time of application on August 15, 2011. The Department noted that the Claimant marked "yes" to section #48 which states, in pertinent part – "I understand that I may be required to repay any benefits paid to me or on my behalf for which I was not eligible because of unintentional errors made by me or by DHHR."
- 6) As a matter of record, the Claimant acknowledged that a SNAP overpayment occurred, but felt repayment was unfair because she did everything she was supposed to do. The Claimant reported that she became very frustrated when advised of the overpayment because she had just lost her job and was required to move out of her residence. In addition, she is a diabetic, and taking away SNAP benefits for repayment is especially difficult due to her specialized dietary needs.
- 7) West Virginia Income Maintenance Manual, Chapter 10.3.NNNN., indicates that unemployment income must be counted as unearned income when calculating SNAP benefits.
- 8) West Virginia Income Maintenance Manual, Chapter 10.4 provides that SNAP benefits are issued on a monthly basis. Therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. Policy further provides that the benefit amount is determined by the countable monthly income and the number (of persons) in the benefit group.
- 9) West Virginia Income Maintenance Manual, Chapter 20.2:  
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.
- 10) West Virginia Income Maintenance Manual, Chapter 20.2,C:  
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 overissuance.
  - An unintentional error made by the client resulted in the overissuance

### **VIII. CONCLUSIONS OF LAW:**

- 1) Evidence reveals that an error was made by the Department when the Claimant's SNAP benefits were calculated – unemployment income was not considered when benefits were issued in September, October and November 2011. This information, however, serves only to show that the overpayment is the result of an Agency error. The fact remains that the Claimant was issued \$282 in SNAP benefits to which she was not entitled.
- 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 - Policy makes no distinction between claims resulting from errors made by the Claimant 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 the repayment claim based on an Agency error is 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 \$282 for the period of September 1, 2011 through November 30, 2011.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ Day of February, 2012.**

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**Thomas E. Arnett**  
**State Hearing Officer**