



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

March 23, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1234

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

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

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Brian Shreve, Repayment Investigator

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

██████████,

Appellant,

v.

Action Number: 17-BOR-1234

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (WV DHHR) Common Chapters Manual. This fair hearing was convened on March 14, 2017, on an appeal filed February 9, 2017.

The matter before the Hearing Officer arises from the January 18, 2017 decision by the Respondent to establish a repayment claim against the Appellant's receipt of Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by the Department's Representative, Repayment Investigator Brian Shreve. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was his wife ██████████. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Form ES-FS-5, Food Stamp (now SNAP) Claim Determination
- D-2 WV Income Maintenance Manual (WV IMM), Chapter 10, §10.3.DD
- D-3 WV IMM, Chapter 20, §20.2
- D-4 Written statement by Appellant, dated December 13, 2016
- D-5 Photograph of Appellant with audio and video equipment
- D-6 Consumer Loan Application from ██████████, dated January 29, 2013
- D-7 Print-out of Appellant's Facebook page, retrieved on February 9, 2017
- D-8 Print-out of Appellant's Facebook page, retrieved on December 1, 2016
- D-9 Print-out of Facebook page for ██████████, retrieved on December 1, 2016

- D-10 Print-out of Facebook page for [REDACTED], retrieved on January 25, 2017
- D-11 Print-out of Facebook page for [REDACTED], retrieved on January 25, 2017
- D-12 Print-outs from Appellant's SNAP case record of household mailing address and household members
- D-13 Letter from Department to Appellant, dated January 18, 2017

Appellant's Exhibits

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence during the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant's household was a recipient of SNAP benefits from July through December 2017.
- 2) The Department received information to the effect that the Appellant had not reported certain self-employment income through these months. The Appellant provided musical entertainment services as a "disc jockey" (herein referred to as DJ), providing pre-recorded music and entertainment using his amplification and speaker equipment for nightclubs, school dances and other events.
- 3) The Department created a repayment claim against the Appellant based on the belief that his household was not eligible for SNAP benefits throughout the repayment period. The amount of the repayment claim was \$3364 (Exhibit D-1).
- 4) The Department sent the Appellant a letter (Exhibit D-13) on January 18, 2017, informing him of the repayment claim.
- 5) The Appellant requested a fair hearing to protest the Department's establishment of this repayment obligation.

APPLICABLE POLICY

The WV Income Maintenance Manual (WV IMM) Chapter 10, §10.3.DD.3 states that self-employment income is counted as earned income for SNAP benefits.

The WV IMM, Chapter 20, §20.2 reads, "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."

WV IMM, Chapter 20, §20.2.C.1 reads, “A UPV claim is established when . . . an unintentional error made by the client resulted in the overissuance . . .”

DISCUSSION

The Department established a repayment obligation against the Appellant because he allegedly had not reported self-employment income he had earned as a DJ for a nightclub and certain events in the [REDACTED] WV, area. The Department provided evidence in the form of Facebook posts from the Appellant’s Facebook page (Exhibits D-7, D-8, D-9, D-10 and D-11), wherein he advertised his business, [REDACTED], providing music for a nightclub in [REDACTED] WV, [REDACTED]. The Facebook page for the Appellant and for [REDACTED] lists numerous events at [REDACTED], such as holiday-themed and karaoke parties. The pages also list other events wherein [REDACTED] provided DJ services, including two street fairs, a wedding in [REDACTED] and the [REDACTED] High School’s upcoming Spring Prom.

The Appellant testified that many of the events listed on his Facebook page for [REDACTED] were promotions on behalf of the nightclub, and [REDACTED] did not provide DJ services at all of them. He testified that he provided music for two street fairs as a favor to one of his wife’s friends, and was not paid. He stated he will provide DJ services for the [REDACTED] High School prom in return for his son’s fees for attending the prom. (His son is a [REDACTED] student.) He stated the wedding was for his sister-in-law, and he is providing DJ services for the wedding for no charge because it will be a weekend vacation for himself and his family.

The Department’s representative testified that one particular Facebook post, made on August 15, 2016 (Exhibit D-7), refutes the Appellant’s position that he was not paid for his DJ services. The post reads as follows in part:

Where in the hell do people get off telling me “You don’t have a real job”????? I’m going to put this crap out there in public and point blank. I’ve had my BUSINESS for 5 years now. On a normal weekend, I can make in 8 hours what most people make in a week. There is lifting, moving driving, research, programs, money spent and dealing with the public that is involved with every event that I do. I have to keep track of my income, money spent, I pay taxes and I DO NOT cheat the government on them.

The Department’s representative also submitted as evidence a loan application the Appellant made with [REDACTED], [REDACTED] WV, dated January 29, 2013 (Exhibit D-6). The application lists income for the Appellant as self-employment in the amount of \$500 per month.

The Appellant testified that the reason he made the Facebook post about his self-employment was that he had been insulted on Facebook about not working. He testified he became angry, and made the comment to “get people off my back.” He stated that none of this was true. He testified regarding the loan application that he had a family medical emergency requiring a two-week stay in [REDACTED], so he applied for a personal loan to cover the cost. He stated that the loan officer at [REDACTED] entered this false income information on his loan application so that the loan would be approved.

The Department's representative testified he established the repayment obligation based on evidence which included the loan application listing self-employment income and the Facebook posts wherein the Appellant discussed his business. The Appellant provided no testimony or evidence to refute the Department's allegations. It is not reasonable to expect that the Appellant has made an investment of money to pay for his DJ equipment, and has created a social media presence for his business, without earning a return for his efforts.

The Department's representative testified that he established the amount of repayment based on his position that the Appellant's household was completely ineligible for SNAP benefits. He stated that if the Board of Review upholds the establishment of the repayment obligation, he will recalculate the repayment amount based on an additional \$500 per month income. He added that this would reduce the amount of the obligation, but he could not provide an exact amount for the recalculated obligation.

The Department acted correctly to impose a repayment against the Appellant's receipt of SNAP benefits.

CONCLUSION OF LAW

The WV Income Maintenance manual, in Chapter 20, §20.2, requires the establishment of SNAP repayment claims whenever there has been an excessive issuance of SNAP benefits. As such, the Department correctly established a SNAP repayment claim against the Appellant.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's decision to establish a SNAP repayment claim against the Appellant.

ENTERED this 23rd Day of March 2017.

Stephen M. Baisden
State Hearing Officer