



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Jim Justice
Governor**

**BOARD OF REVIEW
416 Adams St.
Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326**

**Bill J. Crouch
Cabinet Secretary**

October 16, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 17-BOR-2139

Dear Ms. [REDACTED]

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

In arriving at a decision, the Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Claimant's Recourse to Hearing Decision
Form IG-BR-29
cc: Cassandra Burns

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

██████████,

Appellant,

v.

ACTION NO.: 17-BOR-2139

**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' Common Chapters Manual. This fair hearing was convened on September 14, 2017, and reconvened on October 12, 2017, on an appeal filed July 20, 2017.

The matter before the Hearing Officer arises from the May 19, 2017 decision by the Department to reduce the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits. The issues of the fair hearing were the clarification of the reason for the Appellant's SNAP benefit reduction and the calculation of the repayment recoupment amount.

At the hearing, the Respondent appeared by Cassandra Burns, Criminal Investigator for Investigations and Fraud Management (IFM). Appearing as witnesses for the Respondent were Jill Metz, Economic Service Worker; Walter Justice, West Virginia Works Supervisor; and Dan Hickman, West Virginia Works Department Worker. The Appellant, not present, appeared by ██████████, Attorney for Legal Aid of West Virginia, and ██████████, Supervising Attorney for Legal Aid of West Virginia. All witnesses were sworn in and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

D-1 IFM Statement of Advise and Consent, dated April 25, 2017
D-2 IFM Repayment Agreement, dated April 25, 2017

D-3 Notification of SNAP Over-issuance, dated May 12, 2017
D-4 Notice of Decreased Benefit Amount, dated May 19, 2017
D-5 West Virginia Income Maintenance Manual (WVIMM) §20.2.2

Appellant's Exhibits:

None

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

FINDINGS OF FACT

- 1) The Appellant was a recipient of SNAP benefits. (Exhibit D-2 and D-3)
- 2) On April 25, 2017, the Appellant signed a document agreeing to repay \$4,175 in over-issued SNAP benefits by reducing her then-current SNAP allotment by twenty (20) percent each month, beginning June 2017, until the total SNAP claim was paid in full. (Exhibit D-2)
- 3) The Repayment Agreement indicated that the reason for repayment was due to the Appellant's failure to report unearned income. (Exhibit D-2)
- 4) On May 12, 2017, a notice was issued advising the Appellant that a fraud Intentional Program Violation (IPV) claim had been established against her household for trafficking and that a portion of her household's monthly SNAP entitlement would be withheld and applied as payment. (Exhibit D-3)
- 5) The Appellant's agreement and signature are not required on the Repayment Agreement to initiate repayment. The subsequent recoupment of SNAP over-issuance would be deducted by twenty (20) percent of the Appellant's household monthly SNAP allotment had the Appellant not executed the Repayment Agreement.
- 6) The May 12, 2017 notice advised the Appellant that all adults who were members of the household at the time the over-issuance occurred are jointly and severally liable for repayment. (Exhibit D-3)
- 7) On May 19, 2017, a notice was issued advising the Appellant her household's SNAP benefits would decrease from \$402 to \$168 per month effective June 1, 2017. (Exhibit D-4)
- 8) The SNAP benefit over-issuance repayment and decrease in the household's benefit group were the reason for the benefit reduction. (Exhibit D-4)

- 9) The Appellant's SNAP Assistance Group (AG) consisted of the Appellant, [REDACTED], an adult member of the Appellant's household, and [REDACTED], a minor member of the Appellant's family. (Exhibit D-4)
- 10) Once the Appellant was disqualified from the AG, the Appellant's SNAP AG included all eligible individuals who both live together and purchase and prepare their meals together.
- 11) The remaining individuals in the Appellant's AG were [REDACTED], an adult member of the Appellant's household, and [REDACTED], a minor relative of the Appellant. (Exhibit D-4)
- 12) The Appellant contended that the basis for the IPV had not been established and therefore the repayment amount as listed on the Repayment Agreement was not valid. No argument was offered by the Appellant regarding the calculation of the recoupment amount from the Appellant's SNAP benefits.

APPLICABLE POLICY

WV Income Maintenance Manual (WVIMM) §9.1. A.1 provides in part:

The Assistance Group (AG) must include all eligible individuals who both live together and purchase and prepare their meals together...

WVIMM §9.1.2 provides in part:

The following individuals who reside with an assistance group (AG) are not considered AG members or are ineligible to be included in the AG: ...

(h) Intentional Program Violation (IPV)

Persons who have been found guilty of an IPV are disqualified as follows:

- 1st offense: 1 year
- 2nd offense: 2 years
- 3rd offense: Permanent

WVIMM §20.2. C.2 provides in part:

IPV claims must be established for trafficking-related offenses. Claims arising from trafficking related offenses are the value of the trafficking benefits as determined by the individual's admission, adjudication, or documentation that forms the basis of the trafficking determination.

WVIMM §20.2. E provides in part:

Collection action is initiated against the AG which received the over-issuance. When the AG composition changes, collection is pursued against any and all

AG's which include a liable debtor.

The following persons are equally liable for the total amount of the overpayment and are liable debtors:

- Adult or emancipated minors in the AG
- Disqualified individuals who would otherwise be required to be included...

...Recoupment by benefit allotment reduction is mandatory for all claims when a liable debtor is certified for SNAP. RAPIDS automatically begin recoupment and posts these repayments to the claim.

WVIMM §20.2. F.2 provides in part:

(a) Current Recipients:

The current benefit entitlement after the disqualified member has been removed from the AG, is reduced by twenty (20) percent of the entitlement or \$20, whichever is greater. The reduction is based on the entitlement amount prior to the removal of the disqualified member.

WVIMM §20.2. G provides in part:

The Hearings Officer only rules on the type and amount of claim.

DISCUSSION

The Respondent established a \$4,175 SNAP repayment claim against the Appellant due to a trafficking Intentional Program Violation (IPV). A reduction in eligible members of the Appellant's Assistance Group (AG) and the application of an over-issuance recoupment deduction resulted in the reduction of the Appellant's household SNAP benefits from \$402 per month to \$168 per month. The Appellant requested a fair hearing to clarify the reason for the SNAP benefit reduction and the calculation of the repayment recoupment amount.

Pursuant to policy, the Respondent had to show by a preponderance of evidence that the Appellant's SNAP benefit reduction was due to an IPV penalty against the Appellant and that the reduced benefit amount was properly calculated. Notices and testimony presented by the Respondent clearly demonstrated that the Appellant was disqualified from her AG due to a trafficking finding by IFM. The notices and testimony identified trafficking of SNAP benefits as a form of IPV. During the fair hearing, the Respondent testified that although the Appellant was verbally educated by the Respondent that the reason for repayment was due to an IPV, the Repayment Agreement reads that the over-issuance and repayment are due to the Appellant's failure to report unearned income. Subsequent notices issued by the Respondent to the Appellant reflect that the reason for the Appellant's SNAP over-issuance repayment claim are due to a trafficking IPV. The Appellant did not contest that an IPV related over-issuance of SNAP benefits

and subsequent disqualification penalty and repayment claim were the reasons for the reduction in the Appellant's household SNAP benefits.

The Appellant argued that the Appellant did not do anything intentional to violate guidelines regarding SNAP use and that if there was no intentional program violation, there should not have been a repayment claim against the Appellant. The Appellant contended that the Respondent did not meet the burden of proof that the establishment of the Repayment Agreement was entered into freely by the Appellant without fraud and coercion by the Respondent. The Appellant contended that the Respondent had not met the burden of proof for the basis of the Repayment Agreement or that the repayment calculation contained in the agreement was correct or adequately explained to the Appellant. The Respondent testified that had the Appellant disagreed with the recoupment or refused to sign the Repayment Agreement, there would not have been a change to the Appellant's disqualification from her AG or the calculation of the recoupment amount deducted from the Appellant's monthly household SNAP benefits.

The Appellant contended that without information demonstrating the IPV was appropriately established that it could not be determined that the Appellant was over-issued SNAP benefits for which she should be required to repay. Pursuant to policy, in the matter before the Board of Review, this Hearing Officer can only rule on the type and amount of the claim, not whether an IPV had occurred. The Appellant argued that the knowledge of the basis for the IPV claim is necessary to establish the amount of the repayment agreement. The establishment of the over-issuance amount is not an issue that can be ruled upon by the Board of Review in this matter. The Hearing Officer can only determine whether the recoupment amount was properly calculated and deducted from the Appellant's household SNAP benefits. The Respondent testified that the recoupment amount was calculated by twenty (20) percent from the Appellant's benefit amount prior to the Appellant being removed from the AG. The Respondent testified that once the Appellant was disqualified from the AG that the calculated recoupment amount was deducted from the remaining household entitlement, resulting in the Appellant's household receiving a final total SNAP benefit of \$168 per month. The Appellant was provided with opportunities to challenge the calculation of the recoupment amount but made no argument regarding the recoupment amount and only provided argument regarding the establishment of the IPV against the Appellant and the calculation of the repayment amount listed on the Repayment Agreement.

The Appellant contended that the recoupment amount should not have been deducted from the remaining household SNAP entitlement, that her children were the recipients of the remaining entitlement, that the children were minors, and that her children should not be held as debtors to the recoupment. The May 19, 2017 notice reflects that [REDACTED] is an adult member of the Appellant's AG. The May 12, 2017 notice reflects that all adults who were members of the household at the time the over-issuance occurred are jointly and severally liable for over-issuance repayment. The Respondent was correct to deduct the over-issuance recoupment amount from the remaining household SNAP benefits.

The Respondent has demonstrated by a preponderance of evidence that the SNAP benefit reduction reflected in the May 19, 2017 notice to the Appellant was the result of the implementation of an IPV disqualification penalty and over-issuance repayment claim against the Appellant. The Appellant made no argument that the recoupment amount was improperly calculated from the

Appellant's SNAP benefits before the Appellant was disqualified from the AG. Further, the Appellant did not contend that the repayment amount deducted from the Appellant's remaining household SNAP benefits was improperly calculated.

CONCLUSIONS OF LAW

- 1) The reduction of the Appellant's household SNAP benefits was the result of a finding by IFM that the Appellant had committed an Intentional Program Violation (IPV) by trafficking.
- 2) In the matter before the Board of Review, this Hearing Officer can only rule on the type and the amount of the claim, not whether the IPV had occurred.
- 3) Policy requires that persons who have been found guilty of a first offense IPV must be disqualified from SNAP benefits.
- 4) The Appellant's disqualification from her Assistance Group (AG) reduced the number of persons eligible to receive SNAP benefits in her household.
- 5) There was no disagreement between the parties regarding the calculation of the over-issuance recoupment amount or the subsequent recoupment amount deducted from the Appellant's household's remaining SNAP benefits.
- 6) The Respondent's action to decrease the Appellant's household SNAP benefits due to the implementation of an IPV disqualification penalty and over-issuance repayment claim against the Appellant was correct.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Department's decision to reduce the Appellant's SNAP benefits due to implementation of an IPV SNAP disqualification penalty and an over-issuance repayment claim against the Appellant.

ENTERED this 16th day of October 2017.

Tara B. Thompson
State Hearing Officer