



**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 17, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 17-BOR-2140

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-2140

**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 21, 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 and Robert Lane, Supervisor of Criminal Investigations for IFM. The Appellant was present for the hearing and was represented by ██████████, Attorney for Legal Aid of West Virginia, and ██████████, Supervising Attorney for Legal Aid of West Virginia. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

D-1 IFM Statement of Advise and Consent, dated April 24, 2017

D-2 IFM Advance Notice of Administrative Disqualification Hearing Waiver, signed April 24, 2017

D-3 IFM Repayment Agreement, dated April 24, 2017
D-4 Notice of SNAP Disqualification, dated May 19, 2017
D-5 Notice of SNAP Over-issuance, dated May 5, 2017
D-6 Notice of SNAP Decreased Benefit Amount, dated May 19, 2017
D-7 West Virginia Income Maintenance Manual (WVIMM) §20.2.2
D-8 SNAP Review, dated November 16, 2015
D-9 SNAP Review, dated November 14, 2016

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 through D-6, D-8, and D-9)
- 2) As part of her SNAP reviews, on November 24, 2015 and on December 8, 2016, the Appellant signed that she understood that if any member of her assistance group was found to have committed an act of intentional program violation (IPV) including trafficking, the individual would not receive SNAP benefits for a disqualification period and that she understood her assistance group (AG) would have to repay any benefits received for which it was not eligible. (Exhibit D-8 and D-9)
- 3) On April 24, 2017, the Appellant signed a document agreeing to repay \$1,030 in over-issued SNAP benefits by reducing her then-current SNAP allotment by twenty (20) percent each month until the total SNAP claim was paid in full. (Exhibit D-3)
- 4) The Repayment Agreement indicated that the reason for repayment was due to the Appellant's failure to report unearned income. (Exhibit D-3)
- 5) On May 5, 2017, a notice was issued advising the Appellant that a fraud IPV claim had been established against her household for trafficking and that twenty (20) percent of her household's monthly SNAP entitlement would be withheld and applied as payment. (Exhibit D-5)
- 6) 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.

- 7) The May 5, 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-5)
- 8) On May 19, 2017, a notice was issued advising the Appellant that because she was found to have committed an IPV, she had been disqualified from receiving SNAP benefits for a period of twelve (12) months between June 1, 2017 and May 31, 2018. (Exhibit D-4)
- 9) The Appellant's household received \$511 per month in SNAP benefits prior to the Appellant being removed from the Assistance Group (AG). (Exhibit D-4)
- 10) The recoupment amount is based on the entitlement amount prior to the removal of the disqualified member from the AG.
- 11) Twenty (20) percent of the \$511 SNAP benefit amount equals \$102 monthly recoupment. (Exhibit D-6)
- 12) The Appellant's household was estimated to receive \$357 per month in SNAP benefits after the Appellant was removed from the AG. The recoupment amount had not been deducted from the \$357 SNAP benefit estimate. (Exhibit D-4)
- 13) After the \$102 monthly recoupment amount is deducted from the \$357 monthly SNAP allotment, the total benefits to be received by the Appellant's AG equal to \$255 per month in SNAP benefits. (Exhibit D-6)
- 14) On May 19, 2017, a notice was issued advising the Appellant that her household's SNAP benefits would decrease from \$511 to \$255 per month effective June 1, 2017. (Exhibit D-6)
- 15) The SNAP benefit over-issuance repayment and decrease in the household's benefit group were the reason for the benefit reduction. (Exhibit D-4)
- 16) The benefit calculations provided in the May 19, 2017 notice are consistent with policy requirements for a benefit amount reduction resulting from a repayment claim against the Appellant due to an IPV. The reduced SNAP benefit amount for the Appellant's AG was correctly calculated. (Exhibit D-6)
- 17) The Appellant's SNAP Assistance Group (AG) consisted of the Appellant, [REDACTED], an adult member of the Appellant's household, and [REDACTED], an adult member of the Appellant's household. (Exhibit D-6)
- 18) The Appellant was not eligible to receive SNAP benefits from January 2016 to December 2018 due to being disqualified for a SNAP trafficking violation. (Exhibit D-6)

- 19) The effective dates of the Appellant's SNAP disqualification on the May 19, 2017 notice is not consistent with the dates of disqualification provided in the disqualification notice. (Exhibits D-4 and D-6)
- 20) The inconsistency in effective dates would not have an impact on the decrease of the Appellant's SNAP benefits effective June 1, 2017.
- 21) Once the Appellant was disqualified from the AG effective January 2016, the Appellant's SNAP AG included all eligible individuals who both live together and purchase and prepare their meals together.
- 22) The remaining individuals in the Appellant's AG were [REDACTED], an adult member of the Appellant's household, and [REDACTED], and adult member of the Appellant's household. (Exhibit D-6)
- 23) The Appellant contended that the IPV the repayment was based upon had not been established. 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 \$1,030 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's SNAP benefits from \$511 per month to \$255 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 were 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 date of the Appellant's disqualification varied between the notice of SNAP decrease and the notice of disqualification. However, although there is disagreement between the disqualification effective dates between the notices, both notices would have the Appellant disqualified on June 1, 2017, when the Appellant's reduced SNAP benefits were advised to begin.

The Appellant argued that the actions for which the IPV was based did not constitute trafficking. The Appellant contended that the Appellant had no reason to think that she did anything intentionally wrong, and that if there was no intentional program violation, there was no factual basis for the repayment to be based upon. 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 Appellant suffers from multiple mental illnesses that rendered her incapable of understanding what was being discussed when she signed the Repayment Agreement and that the Appellant did not understand what she was agreeing to. 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 argued that the knowledge of the transactions for which the amount on the Repayment Agreement was based are necessary in determining the accuracy of the Repayment Agreement amount. 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's 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 \$255 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 calculation reflected on the May 19, 2017 notice of decreased SNAP benefits is consistent with policy requirements for determining the repayment amount for an IPV claim.

The Appellant contended that the recoupment amount should not have been deducted from the remaining household SNAP entitlement because the Appellant's children were the remaining eligible persons in the Appellant's AG and the Appellant did not understand when she signed the Repayment Agreement that the recoupment would be deducted from her children's SNAP benefits. The May 19, 2017 notice reflects that the remaining members of the AG were adults. The May 5, 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. Further, during previous SNAP reviews the Appellant signed that she understood that her AG would have to repay

any benefits received for which it was not eligible due to an IPV. The Respondent was correct to deduct the over-issuance recoupment amount from the remaining household SNAP benefits.

The Respondent 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. Further, the Respondent has demonstrated that the calculations used to determine the reduced SNAP benefit amount for the Appellant's household were calculated in accordance to policy requirements.

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 for a period of one (1) year.
- 4) The Appellant's disqualification from her Assistance Group (AG) reduced the number of persons eligible to receive SNAP benefits in her household.
- 5) The remaining members of the Appellant's AG are adults who were members of the household at the time the over-issuance occurred and are jointly and severally liable for over-issuance repayment.
- 6) Policy requires that the recoupment amount for an IPV over-issuance claim be calculated based on a reduction of SNAP benefits by twenty (20) percent of the Appellant's household entitlement amount prior to the removal of the disqualified member.
- 7) 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.
- 8) The Respondent's action to decrease the Appellant's household's SNAP benefits due to the implementation of an IPV disqualification penalty an 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 17th day of October 2017.

Tara B. Thompson
State Hearing Officer