



**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-2145

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-2145**

**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 July 14, 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 Addison Hamilton, Criminal Investigator for IFM. The Appellant was present for the initial hearing on September 14, 2017 and was not present when the hearing re-convened on October 12, 2017. During both hearing dates, the Appellant 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 25, 2017
- D-2 IFM Repayment Agreement, dated April 25, 2017
- D-3 Notice of SNAP Over-issuance, dated May 8, 2017
- D-4 Notice of SNAP Decreased Benefit Amount, dated July 14, 2017
- D-5 West Virginia Income Maintenance Manual (WVIMM) §20.2

### **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 through D-4)
- 2) On April 25, 2017, the Appellant signed a document agreeing to repay \$910 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-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 8, 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-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 8, 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 July 14, 2017, a notice was issued advising the Appellant that her household's SNAP benefits would decrease from \$287 to \$88 per month effective August 1, 2017. (Exhibit D-4)
- 8) The SNAP benefit over-issuance repayment, decrease in the household's benefit group members, and a change in Standard Deduction amount applied to SNAP income were the reasons for the Appellant's Assistance Group (AG) SNAP benefit reduction. (Exhibit D-4)
- 9) The Appellant's AG consisted of the Appellant and three adult members of the Appellant's household: [REDACTED], [REDACTED], and [REDACTED]. (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 three individuals in the Appellant's AG were adult members of the Appellant's household. (Exhibit D-4)
- 12) The Appellant contended that the basis for the IPV had not been established and therefore the repayment amount listed on the Repayment Agreement was not valid. No argument was offered by the Appellant regarding the calculation of the recoupment amount deducted 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:

- 1<sup>st</sup> offense: 1 year
- 2<sup>nd</sup> offense: 2 years
- 3<sup>rd</sup> 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 \$910 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), the application of an over-issuance recoupment deduction, and a change in the Standard Deduction amount applied to SNAP income resulted in the reduction of the Appellant's household's SNAP benefits from \$287 per month to \$88 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 demonstrate 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. There was no dispute regarding the Appellant's benefit amount being affected by a change in the Standard Deduction amount applied to the SNAP income. Notices and testimony presented by the Respondent clearly demonstrate 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 reasons for the reduction in the Appellant's household's SNAP benefits.

The Appellant argued that the Respondent did not present any allegations toward the Appellant that were consistent with the definition of trafficking in determining that the Appellant had committed an IPV. The Appellant argued that the establishment of trafficking as a basis for the repayment claim against the Appellant was incorrect. 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 a trafficking IPV had occurred. The Appellant argued that she has multiple cognitive and mental illness limitations that prevented her from fully understanding the Repayment Agreement, the calculation of the twenty (20) percent deduction from her AG SNAP allotment, and that the recoupment would be deducted out of her adult children's SNAP benefit allotment. The Appellant argued that the Respondent was aware that she was a recipient of Social Security Disability Insurance (SSDI) and did not consider her disability factors regarding her ability to understand the Repayment Agreement. The Appellant argued that she was frightened and was told that if she did not sign the Repayment Agreement that she would go to jail. The Respondent testified that had the Appellant not understood, 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 were necessary to determine 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 SNAP benefits. The Respondent testified that the recoupment amount was calculated as required per policy 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 and in combination with other changes to the Appellant's Standard Deductions applied to the SNAP income, resulted in the Appellant's household receiving a final total SNAP allotment of \$88 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 she did not understand that the recoupment would be deducted from the SNAP benefits of the adult children in her AG. The May 8, 2017 notice reflects that all adults who were members of the household at the time of the over-issuance are jointly and severally liable for over-issuance repayment. The Respondent was correct to deduct the over-issuance recoupment amount from the remaining household's SNAP benefits.

The Respondent has demonstrated 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. There was no dispute regarding the Appellant's benefit amount being affected by a change in the Standard Deduction amount applied to the SNAP income. 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 and a change in the Standard Deduction amount applied to the SNAP income.
- 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 an IPV offense 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) The remaining members of the Appellant's AG were 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's 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, the subsequent recoupment amount deducted from the Appellant's household's remaining SNAP benefits, or the change in the Standard Deduction amount applied to the SNAP income.
- 8) 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 the implementation of an IPV SNAP disqualification penalty and an over-issuance repayment claim against the Appellant.

ENTERED this 17th day of October 2017.

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**Tara B. Thompson**  
State Hearing Officer