



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

September 29, 2017



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 17-BOR-2322

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 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-2322**

**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 September 28, 2017, on an appeal filed August 17, 2017.

The matter before the Hearing Officer arises from the August 11, 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 Repayment Investigator Brian Shreve. Appearing as witnesses for the Respondent were ██████████. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was her 17-year-old son. All participants were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Benefit Recovery Referral from Respondent's SNAP issuance computer network
- D-2 WV Board of Education Home Schooling form, dated September 22, 2016
- D-3 Written statement from ██████████, dated June 16, 2016
- D-4 Form ES-FS-5, Food Stamp (SNAP) Claim Determination
- D-5 WV Income Maintenance Manual (WV IMM), Chapter 9, §9.21
- D-6 WV IMM, Chapter 20, §20.2
- D-7 Letter from Department to Appellant, dated August 11, 2017
- D-8 Map print-outs from Google Earth

### **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 received SNAP benefits for her household, which consisted of her son and herself, from June 2015 through June 2017 (Exhibit D-4).
- 2) The Department received a report to the effect that the Appellant's son, a minor, did not live with her in her household, and had not done so for about two years (Exhibit D-1).
- 3) On June 16, 2017, the Appellant's ex-father-in-law signed a statement (Exhibit D-3) which reads as follows, "[Appellant's son] has lived with me and his grandmother for roughly 2.5 years. He moved in after his other grandparents kicked him out. He left and lives with his [mother] after an argument for about 3 weeks now."
- 4) The Department created a repayment claim against the Appellant based on the belief that her son did not live in her home from June 2015 to June 2017. The amount of the repayment claim was \$4064 (Exhibit D-4).
- 5) The Department sent the Appellant a letter (Exhibit D-7) on August 11, 2017, informing her of the establishment of the repayment claim.
- 6) 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 9, §9.1.A.1 reads, "The SNAP [assistance group or] AG must include all eligible individuals who both live together and purchase and prepare their meals together . . . When an individual, who is included in an AG, is absent or is expected to be absent from the home for a full calendar month, he [or she] is no longer eligible to be included in the AG, and must be removed after proper notice.

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."

## **DISCUSSION**

The Department established a repayment obligation against the Appellant because she received SNAP benefits for herself and her son from June 2015 through June 2017, when her son allegedly lived with his paternal grandparents throughout that period of time.

The Department's witness, the son's paternal grandfather, testified that the information he provided in his June 16, 2017 written statement (Exhibit D-3), was correct, that the Appellant's son had lived with him and his wife from "spring 2015" until about three weeks before he wrote the statement.

The Department's representative testified that normally, he would provide a form from the son's school to verify his residence. Schools are required to keep forms for each student, listing where and with whom he or she lives. He testified that this was not possible in this case because the son was home schooled. He submitted a form from [REDACTED] County Schools wherein the Appellant had registered to home school her son effective September 22, 2016 (Exhibit D-2). He added that because the school did not have residence records for the Appellant's son, he could not obtain verification from [REDACTED] County Schools that he lived with his mother or his paternal grandfather.

Both the Appellant and her son testified that he had always lived with his mother, except for the occasional visit with family members, weekend sleepovers, vacations and other overnight outings. The son testified that his clothes and belongings were kept at the Appellant's home. He stated that he and his mother both lived with his maternal grandparents for a time, but when his mother moved from her parents' home into her current residence, he moved with her and has been there since that time.

The Department provided a written statement that the Appellant's son lived with his paternal grandfather throughout the repayment period of June 2015 through June 2017, and testimony from the paternal grandfather to confirm the information from the written statement. The Appellant provided testimony from herself and her son to the effect that her son lived with her throughout this period of time.

The Department must provide a preponderance of evidence to establish that the son did not live in his mother's household from June 2015 through June 2017. Despite the credible testimony of the Department's witness, without any corroboration, the Department has not established by a preponderance of evidence the Appellant's son lived with his grandparents. The Department did not meet the standard of proof necessary to establish a repayment obligation 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. However, the Department did not establish by a preponderance of evidence that the Appellant had received

an excessive issuance. As such, the Department was not correct to establish a SNAP repayment claim against the Appellant.

**DECISION**

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

**ENTERED this 29<sup>th</sup> Day of September 2017.**

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**Stephen M. Baisden  
State Hearing Officer**