



**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**

November 16, 2017



RE: [REDACTED] v. WVDHHR
ACTION NO.: 17-BOR-2343

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 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-2343

**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 October 25, 2017, on an appeal filed August 17, 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 deducted from the Appellant's remaining allotment.

At the hearing, the Respondent appeared by Cassandra Burns, Criminal Investigator for Investigations and Fraud Management (IFM). The Appellant was present and was represented by ██████████, attorney with 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 May 8, 2017
- D-2 IFM Repayment Agreement, dated May 8, 2017
- D-3 Notification of SNAP Disqualification, dated May 19, 2017
- D-4 Two Notifications of SNAP Over-issuance, dated May 18, 2017
- D-5 Notice of Decreased SNAP Benefit Amount, dated May 19, 2017

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 (Exhibits D-2 through D-5)
- 2) On May 8, 2017, the Appellant signed a document agreeing to repay \$767 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) The Repayment Agreement served as a notice of an over-issuance of SNAP benefits during the period of January 2014 through December 2016. (Exhibit D-2)
- 5) On May 18, 2017, the Respondent issued two notices to the Appellant advising her that over-issuance of SNAP benefits had occurred resulting from a trafficking Intentional Program Violation (IPV) during January 1, 2014 through June 30, 2014, and during December 31, 2014 through December 31, 2016. (Exhibit D-4)
- 6) An incorrect address for the Appellant of [REDACTED], [REDACTED] [REDACTED] [REDACTED] is reflected on both May 18, 2017 notices. (Exhibit D-4)
- 7) On May 19, 2017, a notice was issued advising the Appellant that due to an IPV established by a form, dated May 8, 2017, she had been disqualified from receiving SNAP for twelve (12) months beginning June 1, 2017. (Exhibit D-3)
- 8) The Appellant's household received \$324 per month in SNAP benefits prior to the Appellant being removed from the Assistance Group (AG). (Exhibit D-3)
- 9) The recoupment amount is based on the entitlement amount prior to the removal of the disqualified member from the AG and deducted from the benefit entitlement after the disqualified member has been removed from the AG. (Exhibit D-6)
- 10) Twenty (20) percent of the \$324 SNAP benefit amount equals \$64 monthly recoupment. (Exhibit D-5)

- 11) The Appellant's household was estimated to receive \$161 per month in SNAP benefits after the Appellant was removed from the AG. The recoupment amount had not been deducted from the \$161 SNAP benefit estimate. (Exhibit D-3)
- 12) After the \$64 monthly recoupment amount is deducted from the \$161 monthly household SNAP allotment, the total entitlement to be received by the Appellant's AG equals \$97 per month in SNAP benefits. (Exhibit D-5)
- 13) On May 19, 2017, a notice was issued advising the Appellant that her household's SNAP benefits would decrease from \$324 per month to \$97 in SNAP benefits because number of persons in the household receiving SNAP benefits was reduced when the Appellant was disqualified from the AG and because the Appellant's over-issuance recoupment amount was deducted from the remaining household entitlement. (Exhibit D-5)
- 14) 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. (Exhibits D-5 and D-6)
- 15) The reduced SNAP benefit amount for the Appellant's AG was correctly calculated. (Exhibit D-5)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (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)

- 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. 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 \$767 SNAP repayment claim against the Appellant due to a trafficking Intentional Program Violation (IPV) founded on a waiver signed by the Appellant during an Investigation and Fraud Management (IFM) investigation. Because of the IPV, the Appellant was disqualified from her SNAP Assistance Group (AG) for a period of twelve (12) months. A reduction in eligible members of the Appellant's AG and the implementation of an over-issuance recoupment deduction reduced the Appellant's household SNAP benefits from \$324 per month to \$97 per month. The Appellant requested a fair hearing to establish the reason for the SNAP benefit reduction and to challenge the calculation of the repayment recoupment amount deducted from the Appellant's remaining allotment.

Pursuant to policy, the Respondent had to show by a preponderance of evidence that the Appellant's SNAP benefits were reduced because of a decrease in persons receiving SNAP benefits and that the over-issuance repayment recoupment was properly calculated from the Appellant household's remaining SNAP entitlement. Evidence presented by the Respondent clearly demonstrated that the Appellant was disqualified from her AG because of an IPV finding by IFM against the Appellant. During the fair hearing, the Respondent testified that the Appellant was verbally educated by the Respondent that the reason for repayment was due to a trafficking IPV although the Repayment Agreement states that the over-issuance and repayment were due to the Appellant's failure to report unearned income. An incorrect address was reflected on the May 18, 2017 notices. The notices advised the Appellant that trafficking is the type of IPV committed by the Appellant; it is unclear whether the Appellant received the two notices mailed to the incorrect address. Although it is possible that the two notices were not received, the Appellant was initially informed of the over-issuance, dates of over-issuance, and repayment by recoupment on May 8, 2017. Subsequent notices issued to the Appellant by the Respondent reflected that the reason for the Appellant's SNAP disqualification was due to an IPV. The Appellant did not contest that the Appellant had signed a waiver resulting in an IPV finding against her or that disqualification of the Appellant from the AG was for a reason other than the IPV finding. The Appellant argued that the Respondent had not sufficiently proven that an IPV had occurred and disagreed with the Respondent's establishment of the Repayment Agreement amount resulting from the IPV established on the Appellant's signature on a waiver. 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 over-issuance amount was established during the IFM investigation resulting in an IPV finding and is therefore 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 Appellant was provided with opportunities to challenge the calculation of the recoupment amount being deducted from the Appellant's AG remaining entitlement but made no

argument regarding the recoupment amount deducted and only provided arguments 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 notice of decreased benefits, dated May 19, 2017, is consistent with policy requirements for determining the repayment recoupment amount for an IPV.

The Respondent has demonstrated by a preponderance of evidence that the Appellant's SNAP benefit reduction was due to a decrease of persons in the Appellant's AG eligible to receive SNAP benefits and that the over-issuance repayment recoupment was properly calculated from the remaining SNAP entitlement of the Appellant's AG.

CONCLUSIONS OF LAW

- 1) The Appellant's household SNAP benefits were reduced because the Appellant had been disqualified from her AG due to an IPV finding against the Appellant by IFM, resulting in a lesser number of AG members receiving the SNAP benefit, and because an over-issuance recoupment amount was deducted from the remaining SNAP entitlement of the Appellant's AG.
- 2) In the matter before the Board of Review, this Hearing Officer can only rule on the type and 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) Policy requires that the recoupment amount for an IPV over-issuance claim be calculated based on twenty (20) percent of the SNAP entitlement amount prior to the removal of the disqualified member from the AG and deducted from the SNAP benefit allotment after the disqualified member has been removed from the AG.
- 5) The Respondent correctly decreased the Appellant's household SNAP benefit from \$324 to \$97 due to the implementation of an IPV disqualification penalty and over-issuance repayment claim against the Appellant.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Department's decision reduce the Appellant's SNAP benefit due to a decrease in the number of persons in the AG receiving the benefit and implementation of an over-issuance repayment claim as outlined in the May 19, 2017 notice.

ENTERED this 16th day of November 2017.

Tara B. Thompson
State Hearing Officer