



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313
304-746-2360
Fax – 304-558-0851**

**Jolynn Marra
Interim Inspector General**

September 06, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:18-BOR-2025

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,

Danielle C. Jarrett
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29
cc: Christina Saunders, Repayment Investigator

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

██████████,

Appellant,

v.

Action Number: 18-BOR-2025

**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 August 7, 2018, on an appeal filed July 12, 2018.

The matter before the Hearing Officer arises from the June 28, 2018 decision by the Respondent to seek repayment of Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Christina Saunders, Repayment Investigator, WVDHHR. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Benefit Recovery Referral
- D-2 Food Stamp (SNAP) Claim Determination form, Food Stamp (SNAP) Allotment Determination, SNAP Claim Calculation sheet, SNAP Issuance History Disbursement, Food Stamp (SNAP) Gross Income Test sheet, and Case Comments
- D-3 OSCAR printout of Child Support Disbursements
- D-4 SNAP CSLE Review, dated stamped for February 21, 2017
- D-5 SNAP 6 to 12 Month Contact form, dated stamped for July 31, 2017
- D-6 West Virginia Income Maintenance Manual § 1.2.4
- D-7 West Virginia Income Maintenance Manual § 1.2.3.A
- D-8 West Virginia Income Maintenance Manual § 4
- D-9 West Virginia Income Maintenance Manual §§ 11.2 through 11.2.1

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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant was a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits.
- 2) On January 2, 2018, the Respondent received a repayment referral alleging the Appellant received SNAP in error due to direct child support and arrearage payments received by the Appellant's household were not used when calculating the Appellant's monthly SNAP benefits. (Exhibit D-1)
- 3) On February 21, 2017, the Appellant signed the Rights and Responsibilities form (R&R) acknowledging her understanding that she was responsible for repayment of over-issued SNAP benefits whether due to her own error or that of the agency. (Exhibit D-4)
- 4) As a result of the referral, an investigation was completed, and the Respondent established a SNAP repayment claim against the Appellant.
- 5) On June 28, 2018, notice was mailed to the Appellant which indicated that due to an error, she received an over-issuance of SNAP of \$2,038 for the months of September 1, 2017 through January 31, 2018.
- 6) At the time of the hearing, the Respondent indicated that the June 28, 2018 notice was incorrect, that the over-issuance was due to agency error and the total over-issuance was in the amount of \$1,475.00. (Exhibit D-2)
- 7) On July 31, 2017, the Appellant submitted a SNAP 6 to 12 Month Contact form indicating that she had incurred "child support expenses" in the amount of \$400.00 per month. The Appellant also reported an increase in rent to \$600.00 per month and an increase in income to \$600.00 biweekly. (Exhibit D-5)
- 8) In August 2017, the Appellant's SNAP benefit issuance was determined using gross income in the amount of \$1,186.36, minus an earned income deduction or that an earned income deduction was applied. These factors were used for the calculation of the Appellant's SNAP benefits for the months of September 2017 through January 2018.
- 9) The gross income used to determine the Appellant's SNAP benefits from September 1, 2017 through January 31, 2018, was pre-populated on the July 2017 contact form, derived from the Appellant's gross income as reported in January 2017. (Exhibit D-2)

- 10) The Respondent's repayment calculations used income in the amount of \$2,307.07 per month.
- 11) The Respondent failed to include the reported changes in income and expenses when determining the Appellant's SNAP benefit allotment and alleged repayment obligations for the time period of September 1, 2017 through January 31, 2018.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) § 1.2.2.B reads that periodic reviews of total eligibility for recipients are mandated by federal law. The review may be held, pending receipt of necessary information or verification, but there are processing time limits that must be met. All redeterminations must have a final disposition and the client must be notified of the decision. Eligibility system changes and client notification of any changes resulting from the redetermination conclude the process.

IMM § 1.2.4, states the client's responsibility is to provide complete and accurate information about his or her circumstances so that the worker can make a correct determination about his or her eligibility.

IMM § 1.4.14 reads that all Assistance Groups (AGs) that are not elderly or disabled are certified for twelve (12) months except for applications that qualify for expedited services and verification have been postponed.

IMM § 4.4.3.B, lists the following steps are used to determine countable income for cases meeting the eligibility tests:

- Step 1: Combine months gross countable earnings and monthly gross profit from self-employment.
- Step 2: Deduct 20% of Step 1.
- Step 3: Add the gross countable unearned income.
- Step 4: Subtract the Standard Deduction found in Appendix B.
- Step 5: Subtract allowable Dependent Care Expenses.
- Step 6: Subtract the amount of legally obligated child support actually paid.
- Step 7: Subtract the Homeless Shelter Stand Deduction found in Appendix B.
- Step 8: Subtract allowable medical expenses in excess of \$35.00.
- Step 9: Calculate 50% of the remaining income and compare it to the actual monthly shelter/SUC amount.
- Step 10: Shelter/SUA is greater than Step 9 and the amount in excess of 50% is not to exceed the shelter/utility deducted to arrive at a countable income.
- Step 11: Compare the countable income to the maximum net income of \$781.09 for the AG size of four (4).

IMM § 4.5.1, reads that eligibility is determined, and benefits are issued monthly; therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. For all cases, the worker must determine the amount of income that can be reasonably anticipated for the

AG. For all cases, income is projected; past income is used only when it reflects the income the client reasonable expects to receive during the certification period.

IMM § 7.3 indicates that the child support expenses or child support income must be reported at application and at redetermination or when the client reports a change in the legally obligated amount or amount actually paid. Prior to initial approval, at application and redetermination, all income used in calculating eligibility and the amount of the benefit must be verified. Shelter expenses and utility expenses for standard utility allowance (SUA) standards only have to verify if the information provided is questionable.

IMM § 10.4.2.D directs that all SNAP AGs certified for 12 or 24 months must have a report completed in the mid-month of eligibility. Verification is not required for the form to be considered complete. If a change is reported that requires verification, it must be requested using a DFA-6. Failure to provide requested verification results in AG closure or loss of a deduction after advance notice.

IMM § 11.2, reads that when an AG 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 (IPV) claim. The claim is the difference between the SNAP entitlement of the AG and the SNAP allotment the AG was entitled to receive.

IMM § 11.2.1 directs Repayment Investigators must, if the referral is appropriate, consider the client's reporting requirements, the worker's timely action, and the advance notice period.

IMM § 11.2.3.A, reads that there are two types of UPVs – client error and agency errors. A UPV claim may be established when an error by the Department of Health and Human Resources (DHHR) resulted in the over-issuance and when an unintentional error made by the client resulted in the over-issuance.

IMM § 11.3.4.B reads that when cases become ineligible due to excessive, redirected child support, the first month of ineligibility is the month following the month in which the change occurs.

DISCUSSION

On January 2, 2018, the Respondent received a referral for the over-issuance of SNAP benefits due to unearned income being excluded when determining the Appellant's monthly SNAP allotment. In July 2018, the Respondent issued a notice advising the Appellant that a repayment claim had been established against her due to over-issuance of SNAP benefits due to the Appellant's failure to report the receipt of child support. The Appellant argued that she reported her income as required and that the Department erred by not acting upon the information she provided at the time of her review. During the hearing, the Department Representative acknowledged that the over-issuance of benefits should be attributed to agency error instead of client error because the Appellant did provide income information at the time of review.

The Appellant further argued that because the Department caused the error, she should not be responsible for repayment of the over-issuance. The Respondent reminded the Appellant that on February 21, 2017, the Appellant signed the R&R acknowledging her understanding that she was responsible for repayment of over-issued SNAP benefits whether due to her own error or that of the agency. The Appellant did not dispute that she signed the form and was informed of her repayment responsibility.

The Respondent has to demonstrate by a preponderance of evidence that it correctly followed policy when establishing a repayment claim against the Appellant. The West Virginia Income Maintenance Manual explains that when an AG has been issued more SNAP than it was entitled to receive, corrective action must be taken by establishing a repayment claim. Once the Respondent determined the Appellant received a monthly direct child support payment in the amount of \$400.00 and consistent arrearages in the amount of \$61.54 that was not included in her SNAP benefit calculations. The Respondent acted in accordance with policy and established a benefit recovery referral for SNAP benefits over-issued to the Appellant from September 1, 2017 through January 31, 2018.

In determining the amount of claim, the Department's Representative testified that following a pre-hearing conference, she determined the over-issuance was a result of an agency error and that the repayment claim calculation outlined in the notice was also incorrect. The repayment claim was recalculated and the repayment amount was reduced from \$2,038.00 to \$1,475.00.

The Appellant's SNAP 6 to 12 Month Contact form submitted on July 31, 2017, reflects that she disclosed she had changes to her household income and expenses. The Respondent's contact form indicated that her rent/shelter cost was \$600.00 per month. The contact form also indicated that the Appellant had monthly "child support expenses" in the amount of \$400. However, based on evidence presented during the hearing, the Appellant thought she had indicated that the \$400 was income and not an expense. Pursuant to policy, the Respondent had a duty to act upon the reported changes included on the contact form. However, there is no indication that the Respondent included the Appellant's reported changes in expenses and income when determining her SNAP allotment and repayment obligation for the September 2017 through January 2018 time frame. While the Respondent contended the Appellant received \$1,475.00 in an over-issuance of SNAP benefits, the Respondent failed to provide information necessary to determine if such a calculation was correct.

CONCLUSIONS OF LAW

Because the Respondent failed to prove by a preponderance of evidence that the SNAP claim was established correctly, it is incorrect to establish a repayment claim in the amount of \$1,475.00.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the decision of the Respondent to establish a \$1,475.00 repayment claim against the Appellant.

ENTERED this _____ day of 2018.

**Danielle C. Jarrett
State Hearing Officer**