



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
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**Jolynn Marra
Interim Inspector General**

September 07, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:18-BOR-2030

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: April Stuckey, Repayment Investigator

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

██████████,

Appellant,

v.

Action Number: 18-BOR-2030

**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 16, 2018.

The matter before the Hearing Officer arises from the May 1, 2018 decision by the Respondent to seek repayment of "over-issued" Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by April Stuckey, 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 West Virginia Income Maintenance Manual § 11.2
- D-3 West Virginia Income Maintenance Manual §§ 11.2.2 through 11.2.3.A.1
- D-4 7 CFR § 273.18
- D-5 Rights and Responsibilities form, dates November 9, 2016
- D-6 West Virginia Income Maintenance Manual §§ 3.2.1.D.1 through 3.2.1.D.3
- D-7 West Virginia Income Maintenance Manual § 3.2.1.D.4
- D-8 Disability/Incapacity Medical Assessment, signed and dated November 10, 2016
- D-9 SNAP Claim Determination form and SNAP Issuance History Disbursement

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) At the time of application, the Appellant's Assistance Group (AG) consisted of she and her husband, both of which were defined as disabled under SNAP policy.
- 3) The Appellant resides in [REDACTED] County, West Virginia.
- 4) [REDACTED] County is a designated as an Able-Bodied Adults Without Dependents (ABAWD) county which requires SNAP recipients to participate in the ABAWD program if he or she is at least 18 years old, but not yet 50, and receives SNAP benefits in an Assistance Group (AG) that does not contain an individual under the age of 18.
- 5) As a result of the investigation of the referral, the Respondent alleged the Appellant was defined as an ABAWD effective March 01, 2017.
- 6) On October 25, 2017, the Respondent received a repayment referral alleging the Appellant received SNAP benefits in error due to ABAWD requirements. (Exhibit D-1)
- 7) On May 1, 2018, the Appellant was issued notice that she had received an over-issuance of SNAP benefits in the amount of \$1,532 for the time period of March 2017 through September 2017, as a result of an agency error.
- 8) The Respondent submitted Rights and Responsibilities form (R&R) dated November 09, 2016.
- 9) On November 10, 2016, the Appellant submitted a Disability/Incapacity Assessment (D/I/A) completed on November 10, 2016, establishing a medical exemption from ABAWD requirements. The D/I/A indicated that the Appellant's expected length of time for disability/incapacity is "pending for three (3) months". (Exhibit D-8)
- 10) Because all members of the Appellant's AG were defined as disabled, the Appellant was not due for a redetermination until November or December 2017.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) § 3.2.1.D.1, sets forth the ABAWD policy and program requirements. This policy states that a SNAP recipient must participate in the

ABAWD program if he or she is at least 18 years old, but not yet 50, and receives SNAP benefits in an AG that does not contain an individual under the age of 18. An individual is no longer an ABAWD in the month of his or her 50th birthday. The ABAWD program does not apply to SNAP recipients throughout the entire State of West Virginia. There are only nine (9) counties in West Virginia wherein a SNAP recipient who meets the ABAWD program requirements must participate or meet an exemption. Those counties are Berkeley, Cabell, Harrison, Jefferson, Kanawha, Marion, Monongalia, Morgan, and Putnam.

WV IMM § 1.4.14, reads that the beginning date of eligibility starts the Assistance Groups (AGs) certification period. The client's certification period must be the longest possible period but must not exceed 24 months for AGs in which all adult members are elderly or disabled with no earned income or only excluded earned income. All other AGs are certified for 12 months except for applications that qualify for expedited services and verifications have been postponed.

WV IMM § 1.4.14.B.1, indicates that once a 12-month certification period is established, the worker may extend it to a total of 24 months only when all adult AG members are elderly or disabled and the AG has no earnings or only excluded earnings. No certification period may exceed a total of 24 months.

WV IMM § 3.2.1.D.3, reads that all SNAP work requirements in Chapter 14 also apply to ABAWDs. The ABAWD program allows a SNAP recipient to receive SNAP benefits for three (3) months, whereupon he or she must: 1) work at least twenty (20) hours per week or eighty (80) hours per month; 2) participate in one of several work programs for at least twenty (2) hours per week or eighty (80) hours per month; or 3) participate in the SNAP Education Training (E&T) program. If the recipient does not participate in one of these activities, he or she is not eligible for SNAP benefits after the initial three (3) month period until the ABAWD program ends.

WV IMM § 3.2.1.D.4, allows several exemptions to the ABAWD program requirements. If a SNAP recipient meets one of these exemptions, he or she may continue to receive SNAP benefits after the initial three (3) month period, providing he or she continues to meet the exemption. These exemptions are: 1) caring for an incapacitated member of the AG; 2) receiving Unemployment Compensation Insurance (UCI); 3) being medically certified as physically or mentally unfit for employment; 4) receiving Veteran's Administration (VA) disability income; 5) being a pregnant women; 6) participating in a drug addiction or alcoholism treatment program; 7) being a student in a recognized school, training program or institution of higher education; 8) working at least thirty (30) hours per week or for payment equal to thirty (30) hours per week multiplied by the federal minimum wage.

WV IMM § 9.3.4, requires that a DFA-NL-5 form be used when the information that results in an adverse action is undisputed by the client, he or she agrees with the action to be taken on his or her case and understands that he or she is entitled to receive benefits if the 13-day advance notice requirement is not waived. The waiver allows DHHR to make the change without application of the 13-day advance notice requirement.

WV IMM § 9.3.2.C.1, requires that the notice include the fact that the SNAP AG is closed, or the benefit amount has decreased; the date the action becomes effective; the reason for the action; the

IMM section on which the decision is based; and any other action taken.

WV 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.

WV IMM § 11.2.3.A, reads there are two types of UPVs – client error (CE) and agency errors (AE). A CE claim may be established when it is determined that the over-issuance was a result of an unintentional error made by the client. An AE claim may be established when it is determined that the over-issuance was a result of an error made by the Department.

WV IMM § 14.2.1.B, indicates that when a client loses eligibility for an exemption, the Worker must determine if the client meets any other exemption criteria prior to imposing a penalty. If the exemption is lost during the certification period and clients are not required to report the change, they become subject to SNAP work requirements at redetermination. However, if the client reports losing the exemption, he or she becomes subject to SNAP work requirements at the time of the reported change.

DISCUSSION

The Appellant lives in ██████ County, West Virginia. ██████ County is an ABAWD county which requires individuals defined as ABAWDs to participate in the ABAWD program or meet an exemption. On October 25, 2017, the Respondent received a referral that the Appellant was receiving SNAP benefits that she was not entitled to receive due to being defined as able-bodied and having no dependents. According to ABAWD policy, the individual defined as ABAWD is eligible to receive SNAP benefits for three (3) months without meeting ABAWD program work requirements or exemptions.

The Appellant testified that she does meet an ABAWD exemption because she is disabled. She testified that on December 19, 2016, she had a heart attack leaving her physically disabled. In order to meet the requirements for ABAWD exemption, the Appellant returned to her physician in November 2017, to obtain necessary verification of her disability. The Appellant testified that she has been unable to obtain an updated disability verification form because her current physician has been unable to obtain copies of her medical records from her previous physician in ██████ West Virginia, and hospital records from ██████. The Appellant testified that she provided this information to the Department but could not remember when she provided the information. The Appellant further argued that she does not have resources available for the repayment claim.

The Appellant's D/I/A form dated for November 10, 2016, indicates that the Appellant has been diagnosed with Spinal Stenosis and that the prognosis is to be determined. The form indicates that the length of time the Appellant is expected to be disabled is "pending for a period of three (3) months". The form also reveals that the Appellant is unable to stand or sit for extended periods of time and that she is unable to participate in a work or educational activity of at least five (5) hours

per week with accommodations. The Respondent contended that the Appellant's D/I/A form exempted her from ABAWD requirements for three (3) months. However, the phrase "pending for a period of 3 months" is unclear, it would be speculative to assume it meant the disability was for 3 months. The Respondent stated that the three (3) months the Appellant was exempt from ABAWD requirements from December 2016 through February 2017. The Respondent argued that the Appellant needed an updated medical exemption form to be eligible for SNAP benefits beyond those three (3) months. The Respondent testified that the Appellant received SNAP benefits for March, April, and May 2017, without meeting ABAWD program requirements, and received SNAP benefits for an additional six (6) months (June, July, August, September, October, and November) due to agency error.

Policy requires that individuals receive advance notice of ABAWD requirements and penalties. Because there was no evidence presented at the hearing to establish that the Respondent provided the Appellant such notice, the Appellant was not afforded the opportunity to comply with ABAWD requirements or meet an exemption. Additionally, policy requires the Respondent to determine if the Appellant met an exemption to the ABAWD requirements prior to imposing a penalty. It is unknown if the Respondent did so.

Policy also requires that if the Appellant's certification period of 24 months is established because the Appellant is either elderly or disabled, then the Appellant was not required to report an exemption until her next redetermination which would have occurred in November or December 2017. Policy requires that prior to imposing a penalty, the Respondent is required to determine if the Appellant meets an exemption to the ABAWD requirements.

CONCLUSIONS OF LAW

- 1) The Respondent failed to establish the Appellant received advance notice regarding the ABAWD requirements and the consequences of not meeting those requirements as required by policy.
- 2) The Respondent failed to establish that the Appellant was required to report verification of an ABAWD exemption until her redetermination.
- 3) The Respondent did not prove by a preponderance of evidence that the Appellant received an over-issuance of SNAP.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the decision of the Respondent to establish a \$1,532 SNAP repayment claim against the Appellant.

ENTERED this ____ day of 2018.

Danielle C. Jarrett
State Hearing Officer