



**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**

January 5, 2018



RE: [REDACTED] v. WVDHHR
ACTION NO.: 17-BOR-2883

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 (DHHR). 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: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: April Stuckey, Investigations and Fraud Management (IFM)

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

██████████,

Appellant,

v.

ACTION NO.: 17-BOR-2883

**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 December 28, 2017, on an appeal filed November 27, 2017.

The matter before the Hearing Officer arises from the August 30, 2017 decision by the Department to implement a Supplemental Nutrition Assistance Program (SNAP) over-issuance repayment claim against the Appellant.

At the hearing, the Respondent appeared by April Stuckey, Repayment Investigator for Investigations and Fraud Management. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 Investigations and Fraud Management (IFM) Benefit Recovery Referral, dated October 13, 2016
- D-2 West Virginia Income Maintenance Manual (WVIMM) §20.2
- D-3 WVIMM §20.2 E
- D-4 Food and Nutrition Service, United States Department of Agriculture Regulations §273.18
- D-5 Child Protective Services (CPS) Contact notes, dated November 19, 2012, November 27, 2012, January 2, 2013, and February 1, 2013

D-6 Food Stamp Claim Determination January 2013 through December 2013, and Employee Wage Data

D-7 Notifications of SNAP Over-issuance, dated August 30, 2017 and December 14, 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) On October 13, 2016, a Benefit Recovery Referral was completed for the SNAP over-issuance period of April 1, 2012 through April 30, 2012, concerning the household of [REDACTED]. The Benefit Recovery Referral alleged that during the referral period, [REDACTED] and the Appellant resided together and the Appellant worked out of town. (Exhibit D-1)
- 2) Notices attached to the hearing request identified SNAP over-issuance dates of April 2012 through September 2013; however, the Notices entered into evidence by the Respondent reflected SNAP over-issuance dates of January 1, 2013 through December 31, 2013. All Notices reflected that repayment claims were initiated due to a client error Unintentional Program Violation (UPV) of unreported/incorrect wages/salaries. (Exhibit D-7)
- 3) The Respondent established a UPV claim against the Appellant as a liable debtor. The Appellant stayed with [REDACTED] during the 2013 calendar year. Evidence did not demonstrate when the Appellant began staying with [REDACTED].
- 4) The Appellant was employed with [REDACTED], from the second quarter of 2012 through the fourth quarter of 2013. (Exhibit D-6)
- 5) During 2013, for an eight-month period, the Appellant's employment required him to be out-of-town for two (2) to three (3) week periods. The Appellant would stay with [REDACTED] on weekends or for a few days per week between the 2-3 week out-of-town periods.
- 6) CPS documentation reflected that on two separate occasions, the Appellant was providing child care at the residence of [REDACTED]. The first occasion happened one day after a holiday and the second occasion happened on a Friday. (Exhibit D-5)
- 7) Evidence did not demonstrate that the Appellant was present at the residence of [REDACTED] full time or negate the Appellant's report that he was there on weekends or for

a few days per week between the 2-3 week out-of-town periods. (Exhibits D-1 through D-7)

- 8) Policy provides that the Appellant was not considered a part of [REDACTED] Assistance Group (AG) while he was working out-of-town and was not eligible to be included in the AG with [REDACTED] and their mutual child. Only the amount of income the Appellant made available to his family would have been counted as income.
- 9) The Appellant is not a liable debtor for the AG of [REDACTED].

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) §9.1 A.2 provides in part:

Who cannot be included:

The following individuals who reside with an AG are not considered AG members or are ineligible to be included in the AG. See the Income Group (IG) below for treatment of these individuals' income.

- a. Those Who Do Not Purchase and Prepare Food Together

Other individuals who share living quarters with the AG, but who do not customarily purchase and prepare food with them are not included in the AG. These individuals may apply as a separate AG. However, the exceptions described in item 1, b, (2) must be considered.

WVIMM §9.1 A.1 b (2) provides in part:

Individuals or groups of individuals living with others, but who customarily purchase food and prepare meals separately, are an AG. Customarily purchasing and preparing food separately means that, during the certification period, the client purchases and prepares his food separately from the others in the household over 50% of the time, except for an occasional shared meal. This occasional sharing of food does not interfere with his separate AG status.

Exception: The following individuals who live together must be in the same AG, even if they do not purchase and prepare meals together.

- Spouses are individuals who are legally married to each other under provisions of state law...
- Children under age 18, not living with a parent...
- Children under age 22 living with a parent...

WVIMM §9.1 B provides in part:

The Income Group (IG) includes all AG members and all individuals who live with the AG and would otherwise be included in the AG if not ineligible, disqualified or excluded by law...

WVIMM§9.1 D.2 Examples of AG Composition provides in part:

EXAMPLE: Mr. L works out of state and comes home on weekends and holidays. When he returns to West Virginia, he stays with his wife and three (3) children who receive SNAP benefits. He is not eligible to be included in the AG with his wife and children, because they do not consider that he lives with the AG while he is working. Only the amount of income he makes available to his family is counted as income.

WVIMM §20.2 provides in part:

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 Violation (IPV) claim...

WVIMM §20.2 C.1 provides in part:

A UPV claim is established when...

- An unintentional error made by the client resulted in the over-issuance...

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 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
- An unreported adult who would have been required to be in the AG had he been reported
- Sponsors of alien AGs when the sponsor is responsible for the overpayment
- An authorized representative of an AG if he is responsible for the overpayment...

DISCUSSION

The Respondent received a Benefit Recovery Referral alleging that during the referral period, [REDACTED] and the Appellant resided together and the Appellant worked out-of-town. The Respondent issued multiple notices to the Appellant advising that a repayment claim was being initiated against him as a liable debtor due to SNAP over-issuance between April 1, 2012 and December 31, 2013. The Respondent contended that the Appellant should have been included in [REDACTED] Assistance Group (AG) and that once his income was considered, the AG exceeded income guidelines for SNAP eligibility, resulting in an over-issuance of SNAP benefits. The Appellant argued that he did not live in the home full time, was unaware [REDACTED] was receiving SNAP, and should not be responsible for SNAP over-issuance repayment.

The Respondent bears the burden of proof. To prove that the Appellant is a liable debtor, the Respondent had to demonstrate that the Appellant was a part of [REDACTED] AG at the time SNAP over-issuance occurred. The Respondent entered Child Protective Services (CPS) documentation into evidence to demonstrate that the Appellant was residing with [REDACTED] in 2012 and 2013. The November 19, 2012 Child Protective Services (CPS) documentation demonstrated that [REDACTED] reported that the Appellant planned to reside with her, but documentation did not reflect when the Appellant moved in with [REDACTED]. During the hearing, the Appellant admitted that he stayed with [REDACTED] in 2013, but stated that for an eight (8) month period he worked out-of-state and would only return to her residence on weekends or for a few days during the week between the 2-3 week out-of-town periods. CPS documentation reflected contact with the Appellant on January 2, 2013, one day after the New Year Holiday, and February 1, 2013, a Friday. The Appellant's presence at [REDACTED] residence on these dates is consistent with his testimony that he would stay with [REDACTED] on weekends or for a few days during the week between the 2-3 week out-of-town periods. The Respondent did not present any evidence to demonstrate when the Appellant began residing with [REDACTED] or that the Appellant resided in the home for time periods exceeding weekends or a few days during the week between the 2-3 week out-of-town periods. The Respondent testified that even if the Appellant were on the road for work, he was still considered part of the household AG because he shared a mutual child with [REDACTED].

The Respondent failed to demonstrate by a preponderance of evidence that the Appellant resided with [REDACTED] full time and should have been included in her AG during the period of over-issued SNAP benefits. Pursuant to the example provided in policy, the Appellant could not be considered a member of the AG while he was working out-of-town and only the amount of income he made available to [REDACTED] would have been counted as income for her AG. Because the Appellant could not be considered a member of the AG during the period of over-issued SNAP benefits, a client error UPV cannot be established against him and he cannot be considered a liable debtor for a repayment claim against [REDACTED] AG.

CONCLUSIONS OF LAW

- 1) The Appellant stayed with [REDACTED] in 2013. Due to the Appellant's employment with [REDACTED], the Appellant was only at the residence on weekends or for a few days during the week between the 2-3 week out-of-town periods.

- 2) Pursuant to policy, because the Appellant was not considered as living in [REDACTED] residence while he was working out-of-town, the Appellant was not eligible be included in the Assistance Group (AG) with [REDACTED] and their mutual child.
- 3) Because the Appellant was not an AG member during the SNAP over-issuance period, the Appellant was not a liable debtor for [REDACTED] AG.
- 4) The Respondent was incorrect to establish a SNAP over-issuance repayment claim against the Appellant due to a client error Unintentional Program Violation in the AG of [REDACTED].

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Department's decision to establish a SNAP over-issuance repayment claim against the Appellant due to a client error Unintentional Program Violation in the AG of [REDACTED].

ENTERED this 5th day of January 2018.

Tara B. Thompson
State Hearing Officer