



**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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Charleston, West Virginia 25313
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**Jolynn Marra
Interim Inspector General**

August 30, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:19-BOR-2129

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**

[REDACTED],

Appellant,

v.

BOR Action Numbers: 19-BOR-2129

**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 [REDACTED]. 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 20, 2019, on an appeal filed July 30, 2019.

The matter before the Hearing Officer arises from the April 30, 2019 decision by the Respondent to seek repayment of Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by April Stuckey, Repayment Investigator. 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, dated October 29, 2018
- D-2 West Virginia Income Maintenance Manual (WV IMM) §§ 11.2 through 11.2.1
- D-3 WV IMM § 1.2.4
- D-4 Code of Federal Regulations (CFR) § 273.18
- D-5 SNAP and Medicaid/WVCHIP Review, dated June 14, 2018
- D-6 Investigations and Fraud Management (IFM) Investigative Findings, dated October 24, 2018
- D-7 IFM Witness Statement, dated October 23, 2018
- D-8 IPACT Verification of Birth, dated October 23, 2018
- D-9 eRAPIDS computer system screenshot printout of Case Comments, dated August 6, 2018 through October 26, 2018
- D-10 SNAP Claim Determination Form

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 SNAP benefits from September 1, 2018 through November 30, 2018, for a four-person Assistance Group (AG), herself and her three children and reported no source of income.
- 2) The Appellant resided with [REDACTED] prior to the birth of their common child in July 2018.
- 3) On June 14, 2018, the Appellant completed a SNAP and Medicaid redetermination form and failed to include [REDACTED] as a member of her household. (Exhibit D-5)
- 4) [REDACTED] was employed and received employment income from the first quarter of 2018 through November 30, 2018.
- 5) On August 10, 2018, the Appellant reported an addition to her AG, her child born on July 28, 2018. (Exhibit D-9)
- 6) [REDACTED] is the biological father of the Appellant's child born on July 28, 2018. (Exhibits D-6 through D-9)
- 7) On October 25, 2018, the Respondent's Front-End Fraud Unit (FEFU) completed an investigation into the Appellant's household composition and determined that [REDACTED] resided in the home with the Appellant and received employment income. (Exhibits D-1 and D-6)
- 8) On April 30, 2019, notice was mailed to the Appellant which indicated, that due to a client error, she received an over-issuance of SNAP benefits in the amount of \$2,246 for the months of August 6, 2018 through November 30, 2018.
- 9) At the time of the hearing, the Respondent indicated that the April 30, 2019 notice was incorrect, that the over-issuance was due to client error and the total over-issuance was in the amount of \$1,922. (Exhibit D-10)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV 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.

WV IMM § 3.2.1.A.4 reads that natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as the parent.

WV IMM § 10.4.2 reads that all SNAP AGs must report changes related to eligibility and benefit amount at the time of application and redetermination. SNAP AGs are subject to limited reporting requirements. The reporting requirements for SNAP clients are only for SNAP benefits and do not affect the reporting requirements of any other program of assistance that the AG also receives. Regardless of the SNAP reporting requirement, all changes reported directly by an AG member, the AG's authorized representative and/or authorized Electronic Benefits Transfer (EBT) cardholder, or from a source that is listed as verified upon receipt must be acted on, even if the AG is not required to report the information.

WV IMM § 10.4.2.A Limited Reporting provides in part:

When approved with a gross non-excluded income at or below 130% of the Federal Poverty Level (FPL), an AG must report when the total gross non-excluded earned and unearned income of the Income Group (IG) exceeds 130% of the FPL for the number of individuals in the original AG.

When approval with a gross non-excluded income about 130% of the FPL, an AG must report when the total gross non-excluded earned and unearned income of the IG exceeds 200% of the FPL for the number of individuals in the original AG.

WV IMM § 10.4.2.B.1 reads that action must be taken for all AGs when information is received from a source that is considered verified upon receipt. Investigations and Fraud Management (IFM) finding of an investigation is verified upon receipt. Beneficiary Earnings and Data Exchange (BENDEX) is also considered verified upon receipt.

WV IMM § 10.4.2.B.4 explains that unclear information is any information received from any source with which the Worker cannot readily determine the effect of the reported information on the household's benefit. The Worker must pursue clarification and required verification of unclear information related to these reported changes. Additional information requested from the applicant is due ten (10) calendar days from the date of the verification checklist.

WV IMM § 10.4.2.C reads to determine if a claim for benefit repayment must be established or a lost benefit restores, a decision must be made as to whether or not a change was reported in a timely manner.

WV IMM § 10.4.3.B explains that when the reported change results in a decrease in benefits, the change is effective the following month, if there is time to issue advance notice. If not, the change is effective two months after it occurs. No claim is established unless the client failed to report in a timely manner, and this is the only reason the change could not be made within 13 days for the advance notice period.

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 Violation (IPV) claim. The claim is the difference between the SNAP entitlement of the AG and the SNAP allotment of AG was entitled to receive.

WV IMM § 11.2.3.A.2 reads when the client fails to provide accurate or complete information, the first month of the over-issuance is the month the incorrect, incomplete, or unreported information would have affected the benefit level considering notice and reporting requirement is considered a client error (CE).

WV IMM § 11.2.5.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.

DISCUSSION

On October 29, 2018, the Respondent received a referral for the over-issuance of SNAP benefits due to the Appellant residing with her child's father, [REDACTED], who had employment income. On April 30, 2019, the Respondent issued a notice advising the Appellant that a repayment claim had been established against her due to over-issuance of SNAP benefits for failure to report that she was residing in the home with [REDACTED].

The Appellant requested a fair hearing due to the Respondent's decision to establish a SNAP repayment claim for the time period of August 6, 2018 through November 30, 2018, in the amount of \$2,246.

Based upon a FEFU investigation, it was discovered that the Appellant resided with the father of her child, [REDACTED], and that he was receiving employment income. As a result, [REDACTED] was added in the Appellant's AG. At the time their child was born, policy required the Appellant, [REDACTED], and the common child to be included in the Appellant's AG for SNAP benefits.

The Appellant did not contest the reason for repayment but testified that she was told by the FEFU investigator that she would not be responsible for a repayment of SNAP benefits. The Appellant argued that she contacted the Department sometime between March 2018 and May 2018 and reported both her change of address and that she resided with [REDACTED]. The Appellant contended that because she reported the change, it should not be a client error, because the Department erred when it failed to act on the reported changes. The Appellant further argued that because the Department caused the error, she should not be responsible for repayment of the over-issuance. However, when an error occurs, policy requires repayment by the customer whether the error was caused by the client or the agency.

The Respondent argued the Appellant did not report the change and provided evidence demonstrating that on her June 14, 2018 redetermination form, she listed [REDACTED] address

as her mailing address and reported she resided in her grandmother's home. The Appellant testified that she used [REDACTED] address because she had resided with him "off and on" for a few months. The Appellant also provided testimony that she had trouble with receiving mail at her grandmother's home, so she utilized his mailing address. However, the Appellant provided conflicting testimony. During the hearing, the Appellant testified that she resided with [REDACTED] six (6) months prior to her pregnancy, which was at least (14) months prior to the birth of their common child. As further evidence, the Appellant failed to report her correct living arrangement when she completed her Medicaid redetermination form on October 22, 2018.

The Respondent established by a preponderance of evidence that there was a valid repayment claim, but the Respondent failed to establish that the amount of repayment was correct. The Respondent based the repayment calculation on 2nd quarter earnings of 2018, but the repayment amount was for the end of the 3rd quarter and the 4th quarter earnings for 2018. The Respondent failed to provide evidence of [REDACTED] employment income for the months of September through November 2018 to support its contention that the Appellant's household was over the income limit for SNAP benefits.

The Respondent failed to establish the repayment claim within the applicable timeframes. As a result of the client error, the Appellant received an over-issuance of SNAP benefits from September 1, 2018 through November 1, 2018. However, because the Respondent failed to include [REDACTED] correct income in its calculations of repayment amount, it is unknown if the Respondent was correct in its assessment of a \$1,922 repayment.

CONCLUSIONS OF LAW

- 1) Because the Appellant resided with [REDACTED] and their common child, he was required to be included in the AG beginning September 1, 2018.
- 2) Per policy, when an AG receives more SNAP benefits than it is entitled to receive a repayment claim is established.
- 3) The Appellant received more SNAP benefits than she was entitled to receive from September 1, 2018 through November 30, 2018, as a result of a client error.
- 4) The Appellant is responsible for the repayment whether it was a client error or an agency error.
- 5) Evidence failed to establish the Appellant is responsible for repayment in the amount of \$1,922, as the amount of monthly employment income received by [REDACTED] was not established.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to establish a SNAP repayment claim against the Appellant. It is further the decision of the State Hearing Officer to **REVERSE** the Respondent's determination of repayment in the amount of \$1,922. The matter is hereby **REMANDED** to the Respondent for recalculation of the repayment amount to include a possible reduction as a result of incorrect employment income used for [REDACTED]. All notices issued to the Appellant should include the Appellant's right to a Fair Hearing through the Board of Review.

ENTERED this _____ day of August 2019.

Danielle C. Jarrett
State Hearing Officer