



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

**Bill J. Crouch**  
Cabinet Secretary

**Board of Review  
416 Adams Street Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 79326**

**Jolynn Marra**  
Interim Inspector  
General

April 16, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 20-BOR-1304

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 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: Appellant's Recourse  
Form IG-BR-29

cc: Wanda Morgan, Investigations and Fraud Management

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

████████████████████,

**Appellant,**

v.

**ACTION NO.: 20-BOR-1304**

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on March 31, 2020 an appeal filed February 27, 2020.

The matter before the Hearing Officer arises from the February 4, 2020 determination by the Respondent to implement a Supplemental Nutrition Assistance Program (SNAP) benefit over issuance repayment claim.

At the hearing, the Respondent appeared by Wanda Morgan, Investigations and Fraud Management (IFM). The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Case Comments, dated November 14, 2018 through July 17, 2019
- D-2 Case Summary
- D-3 Case Benefit Summary
- D-4 DHHR SNAP 6 or 12 Month Contact Form, received on April 30, 2019
- D-5 Case Comments, dated May 3 through August 6, 2019
- D-6 DHHR Employment Statement, received July 12, 2019
- D-7 DHHR Verification Checklist, dated July 16, 2019
- D-8 Handwritten Statement, received on August 1, 2019
- D-9 DHHR Data Exchange- New Hire Details
- D-10 Employee Wage Data
- D-11 Instant Client Insights
- D-12 Checks, received July 15 and August 1, 2019

- D-13 Pay Log, received on August 19, 2019
- D-14 Benefit Recovery Referral, dated July 15, 2019, and Overpayment Sheet
- D-15 SNAP Budget
- D-16 DHHR Notice, dated February 4, 2020
- D-17 West Virginia Income Maintenance Manual (WVIMM) §§ 1.2.2-1.2.3.A, 1.2.4-1.2.5, 4.2, 4.4, Chapter 7
- D-18 Transaction Search Results, dated May 11 through August 24, 2019

**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 February 11, 2019, a verified change in household members was reported and the Appellant's SNAP case was changed to a one-person Assistance Group (AG) (Exhibit D-1).
- 2) The Appellant received a monthly SNAP allotment of \$192 from March 2019 through August 2019 based on the Appellant's household's gross earned income of \$0 and a one-person AG (Exhibits D-1, D-3, and D-4).
- 3) On July 15, 2019, a Benefit Recovery Referral (BVRF) was submitted to Investigations and Fraud Management (IFM) alleging that the Appellant had received more SNAP benefits than she was entitled to from June 2019 through August 2019 because the Appellant had failed to report her earned income on the PRC-2 form she submitted on April 30, 2019 (Exhibit D-15).
- 4) On February 4, 2020, the Respondent issued a notice advising the Appellant that she was overissued \$531 in SNAP benefits from June 1 through August 31, 2019, due to a client error of not reporting wages (Exhibit D-16).
- 5) On April 30, 2019, the Appellant applied her signature to a SNAP 6 or 12-month contact PRC-2 form (interim contact form) which certified that the statements on the form were true and correct to the best of her knowledge (Exhibit D-4).
- 6) The Appellant failed to mark "yes" or "no" next to the questions inquiring about whether her gross earned income had changed by more than \$100 or whether she had a change in earnings because she started a job (Exhibit D-4).

- 7) As a result of the information provided by the Appellant on the April 30, 2019 interim contact report, the Respondent made no changes to the amount of the Appellant's SNAP benefit allotment (Exhibits D-3 and D-5).
- 8) On July 8, 2019, the Appellant reported that her two minor children had moved back into her home (Exhibits D-1 and D-6).
- 9) On July 15, 2019, the Respondent verified the change of the household size and added the Appellant's children to the AG (Exhibit D-1).
- 10) On July 12, 2019, the Respondent received a DHHR Employment Statement signed by the Appellant and [REDACTED] general manager on June 4, 2019, which verified that the Appellant was hired at [REDACTED] on April 15, 2019 (Exhibit D-6).
- 11) The Employment Statement verified that the Appellant was hired at \$9 per hour, paid every other week for approximately 20-25 hours of work per week (Exhibit D-6).
- 12) The Appellant received her first pay from [REDACTED] on April 22, 2019, in the gross amount of \$180 (Exhibit D-6).
- 13) On July 16, 2019, the Respondent mailed a verification checklist requesting the Appellant to submit "proof of gross earned income, such as pay stubs/employer statement/[REDACTED]; 6/28/19; 7/12/19" by July 25, 2019 (Exhibit D-7).
- 14) The July 16, 2019 verification checklist was issued 9 days before the income verification submission due date (Exhibit D-7).
- 15) On July 15, 2019, the Appellant submitted copies of a paycheck reflecting \$254.67 net pay for July 13, 2019 (Exhibit D-12).
- 16) On August 1, 2019, the Appellant submitted copies of paychecks reflecting \$248.58 net pay for July 20, 2019, and \$187.79 net pay for July 27, 2019 (Exhibit D-12).
- 17) On August 1, 2019, the Appellant submitted a handwritten statement by [REDACTED] general manager stating that the Appellant is paid weekly and has "roughly 30%" of gross pay taken out of her check for taxes (Exhibit D-8).
- 18) On August 19, 2019, the Appellant submitted a statement sheet signed by the owner of [REDACTED] verifying the amount of the Appellant's gross pay from May 11 through August 10, 2019 (Exhibit D-13).
- 19) The Respondent did not use the Appellant's May 11 through August 10, 2019, gross pay amounts reflected on Exhibit D-13 when calculating the amount of the Appellant's repayment.

- 20) The Respondent used a corrected gross income amount of \$1,830 to determine that the Appellant was overissued \$531 in SNAP benefits from June 1 through August 31, 2019 (Exhibit D-14).

### **APPLICABLE POLICY**

#### **West Virginia Income Maintenance Manual (WVIMM) § 10.4.2 Client Reporting Requirements provides in part:**

All SNAP Assistance Groups (AGs) must report changes related to eligibility and benefit amount at application and redetermination. When reported information results in a change in benefits and additional or clarifying information is needed, the Worker must first request the information by using the DFA-6 or verification checklist. If the client does not provide the information within the time frame specified by the Worker, the appropriate action is taken after advance notice.

When the member reports an addition of an AG member and requested information is not returned, the benefits remain the same.

When the member reports a new source of income and requested information is not returned, benefits close.

#### **WVIMM § 10.4.2.C Timely Reporting and Follow Up provides in part:**

When the client does not report in a timely manner and the change could have been made earlier, a claim for benefit repayment may be established.

#### **WVIMM § 10.4.3.B Decrease in Benefits provides in part:**

When the reported change results in a decrease in benefits, the change is effective the following month, if there is time to issue advanced 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 advanced notice period.

#### **WVIMM § 11.2.2 Procedures for Establishing Supplemental Nutrition Assistance Program (SNAP) Claims provides in part:**

The Investigations and Fraud Management (IFM) staff must perform the following to establish a claim against the Assistance Group (AG):

- Accept all referrals regarding potential SNAP overissuance
- Review the case record and data system information
- Obtain third-party verifications to support allegations
- Identify the month(s) for which the claim is to be established
- Classify the claim as an Unintentional Program Violation (UPV) or Intentional Program Violation (IPV)

- Use the Basis of Issuance charts and policy that were in effect at the time of the error and determine the amount of the overissuance.

**WVIMM §§ 11.2.3-11.2.3.A.2 Identifying the Month(s) for Which Claims are Established provides in part:**

The number of month(s) for which claims are established depend on whether it is an IPV or a UPV. A UPV claim may be established when the client makes an unintentional error that resulted in a SNAP overissuance. When the client fails to provide accurate or complete information, the first month of the overissuance is the month the correct, incomplete, or unreported information would have affected the benefit level considering notice and reporting requirements.

NOTE: When determining the amount of overissuance for any claim type, due to the failure of the household to report earned income in a timely manner, the amount of benefits the client should have received is computed without applying the earned income disregard to any portion of the earnings the client did not report.

**WVIMM §§ 11.2.6-11.2.6.A.1 Determining the Repayment Amount provides in part:**

The minimum amount of repayment is determined as follows:

For a UPV client error, the current benefit entitlement is reduced by 10% or \$10, whichever is greater.

**WVIMM § 1.2.2.B Redetermination Process provides in part:**

Periodic reviews of total eligibility —which are mandated by federal law—take place at specific intervals. Eligibility system changes and client notification of any changes resulting from the redetermination conclude the process.

**WVIMM § 1.2.4 Client responsibility provides in part:**

The client's responsibility is to provide complete and accurate information about her circumstances so that the Worker is able to make a correct determination about her eligibility.

**WVIMM § 9.2.1 SNAP DFA-6, Notice of Information Needed provides in part:**

The date entered in the DFA-6 must be 10 days from the date of issuance.

**West Virginia Common Chapters § 710.12 Computing Time provides in part:**

In computing any period of time prescribed within this rule, the day of the act from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or legal holiday in which

case the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

**WVIMM § 1.4.1.A Failure to Provide Requested Verification:**

If an AG fails to provide the verifications requested on the DFA-6 or verification checklist within the specified time limit, benefits are issued from the date the client provides the verification. The Worker provides benefits using information reported during the original application and any other pertinent information provided.

**WVIMM § 1.4.19.A.1 Amount of Benefits:**

The full month's countable income is used to determine the full month's allotment.

**WVIMM § 4.3.1.30.j Charts of Income Sources provides in part:**

Wages are considered earned income for the purpose of SNAP.

**WVIMM §§ 4.4.1-4.4.1.A Budgeting Method provides in part:**

Eligibility is determined and benefits are issued on a monthly basis; therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. Past income is used only when it reflects the income the client reasonably expects to receive during the certification period.

Use past income when income from the source is expected to continue into the certification period and the amount of income from the same source is expected to be more or less the same. For these purposes, the same source of income means income from the same employer, not just the continued receipt of earned income.

Fluctuating Work Hours Example: The Thorn family members have the following income: Mr. Thorn has earnings that fluctuate greatly from week to week. He expects no change in his earnings. Mr. Thorn's income is anticipated by using his past income as an indication of what he can expect to receive during the certification period. Mr. Thorn's source of income meets the requirements for using past income to anticipate the future income.

**WVIMM §§ 4.4.1.B and 4.4.1.D Consideration of Past Income provides in part:**

Step 1: Determine the amount of income in the 30 calendar days prior to the interview date when the interview is completed on a different day than when the application is received. The appropriate time period is determined by counting back 30 days beginning with the calendar day prior to the date of redetermination. However, if the interview is completed on a different day than when the date the redetermination is received, the 30-day look-back period could begin the day before

the interview date. The income from this 30-day period is the minimum amount of income that must be considered. When, in the Worker's judgement, future income may be more reasonably anticipated by considering the income from a longer period of time, the worker considers income from the time period he determines reasonable. Whether the Worker considers income from the prior 30 days, or from a longer period of time, all of the income received from that source during that time period must be considered and all pay periods must be consecutive.

Step 2: If the income from the previous 30 days is reasonably expected to continue into the new certification period, determine if the amount is reasonably expected to be more or less the same. If so, the income source is used for the new certification period. After the Worker determines all of the income sources that are to be considered for use, the Worker determines the amount of monthly income, based on the frequency of receipt and whether the amount is stable or fluctuates. When the frequency of receipt is weekly and the amount fluctuates, find an average amount per period and convert to a monthly amount.

NOTE: The purpose of finding an average amount of fluctuating income is to even out the highs and lows in the amount of income.

Conversion of income to a monthly amount is accomplished by multiplying an average amount as follows: Weekly amount x 4.3

EXAMPLE: Lily Calla works part-time and is paid weekly. Lily earns \$9 per hour, but the number of hours she works fluctuates each week: \$9 per hour x average number of hours per week x 4.3 = Monthly Amount

Step 3: Record the results of Step 2, including the amount of income, the time period used, and if more than the previous 30 days, the reason additional income was considered.

## **DISCUSSION**

### **Unintentional Program Violation- Client Error**

The Respondent had to prove by a preponderance of evidence that the Appellant committed an unintentional program violation (UPV) through client error by failing to report wages. The Appellant did not contest that she failed to report her employment timely and submitted that she thought changes would have been reported to the Respondent by Child Protective Services (CPS) as circumstances changed in her case. The policy provides that the Appellant has a responsibility to report changes in her circumstances so that the Respondent may make a correct determination about her eligibility.

The Appellant was responsible for providing accurate information on her interim contact form when answering questions regarding whether her income had changed by more than \$100 or



whether she had a change in earnings because she started a job. The Appellant's previous SNAP issuance was based on an income amount of \$0. The evidence verified that the Appellant did have a change in earnings because she had started a job at [REDACTED]. The evidence further established that at the time the Appellant submitted the interim contact report on April 30, 2019, she had received one pay on April 22, 2019, in the gross amount of \$180—which constituted a change in income by more than \$100. The evidence demonstrated that the Appellant committed a UPV through client error by failing to report wages as required by policy.

#### Amount of SNAP benefits overissued

The Appellant argued that she reported her two children in the home in July 2019 and that her SNAP benefit issuance for August 2019 should have been based on a three-person AG—rather than a one-person AG—therefore, she argued the AG should have been entitled to an increased amount of benefits in August 2019. The Respondent contended that because the Appellant had not verified the gross amount of income until August 2019, her August 2019 SNAP benefit issuance was based on the amount of income she had reported on her April 30, 2019 interim contact form.

The policy requires the Respondent to issue a verification checklist when additional information is needed from the Appellant. Regulations require the Respondent to provide the Appellant with 10 days to respond to the request for verification. The verification checklist issued by the Respondent only provided the Appellant with 9 days to submit the request for verification. Because the Respondent's notice was insufficient, the assertion that the Appellant failed to provide income verification by the due date is incorrect. However, because the Appellant did provide verification of gross income in August 2019, the reissuance of a new verification checklist for the Respondent to obtain the requested information is moot.

The policy requires the worker to consider the AG's countable income when determining the amount of the AG's SNAP benefit allotment (WVIMM 1.4.19.A.1). Pursuant to the policy (WVIMM 1.4.1.A), when the AG fails to provide the verifications requested on the verification checklist, benefits are issued from the date the client provides the income verification. Because the Appellant did not submit final verification of her gross earned income until August 2019, the Respondent was required to calculate the amount of the Appellant's August 2019 SNAP benefit allotment using the income information previously reported and any other information provided—including verified information that the Appellant's household size had increased. Because the Respondent had verified the reported change in the Appellant's AG size and added the additional members to the AG during July 2019, the amount of the Appellant's SNAP benefit allotment for August 2019 should have been determined according to her verified AG size and the income she had previously reported.

#### Amount of Repayment Claim

The Respondent had to prove that the repayment claim amount of \$531 had been correctly calculated. The Appellant argued that because she should have been entitled to more benefits in August 2019 due to the increase in the size of her AG, the amount of overissuance due for August 2019 should be decreased. The Respondent argued that because the Appellant had not verified her income amount until August 2019, no changes could be made to the amount of SNAP benefit

allotment until the income was verified. As reflected above, the Respondent should have calculated the amount of the Appellant's August 2019 SNAP benefit allotment using the income information previously reported and information verified by the Respondent in July 2019 regarding the size of the Appellant's AG.

During the hearing, the Respondent testified that the amount of benefits allotted to the Appellant was based on an average of her earned income. However, the Respondent later testified that she did not consider the 15 pays reflected on Exhibit D-13 when calculating the repayment amount because the verification was submitted four months after the Appellant's date of hire. The Respondent used a corrected gross income amount of \$1,830 to determine that the Appellant was overissued \$531 in SNAP benefits from June 1 through August 31, 2019 (Exhibit D-14). Because no evidence was entered to verify what number of pays the Respondent considered to arrive at the income amount used to calculate the Appellant's correct SNAP benefit allotment, this Hearing Officer cannot corroborate that the Respondent correctly calculated the amount of the repayment claim.

### **CONCLUSIONS OF LAW**

- 1) The Respondent may seek repayment for overissued Supplemental Nutrition Assistance Program (SNAP) benefits when a client error —such as failure to provide accurate or complete wage information— results in an unintentional program violation (UPV).
- 2) The Appellant was required to report employment and earned income over \$100 on her SNAP interim contact report form.
- 3) The Appellant committed a UPV when she failed to report employment changes in income over \$100 on her interim contact report form submitted April 30, 2019.
- 4) The first month of SNAP overissuance is the month the unreported income would have affected the Appellant's SNAP benefit level.
- 5) Because the Appellant's May 2019 SNAP benefits had already been issued at the time she submitted her SNAP review on April 30, 2019, June 2019 would have been the first month the Appellant's unreported income would have affected the Appellant's SNAP benefit level.
- 6) The Appellant had a responsibility to provide complete and accurate information about her employment and income so that the Worker could make a correct determination about her SNAP eligibility.
- 7) The Appellant did not submit verification of her gross earned income until August 1, 2019.
- 8) The preponderance of evidence failed to establish that the Respondent correctly considered the verified size of the Appellant's AG when determining the amount of SNAP benefit allotment the AG was entitled to in August 2019.

- 9) The preponderance of evidence failed to establish what gross income was considered when the Respondent calculated the Appellant's corrected gross income amount of \$1,830 to determine that she was overissued \$531 in SNAP benefits from June 1 through August 31, 2019.
- 10) The preponderance of evidence failed to prove that the Respondent correctly calculated the amount of the Appellant's repayment claim.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to establish a repayment claim against the Appellant for overissuance of Supplemental Nutrition Assistance Program (SNAP) benefits due to the Appellant's commission of an unintentional program violation by failing to report wages. The matter is **REMANDED** for recalculation of the amount of the Appellant's SNAP entitlement for August 2019 with consideration of the Appellant's verified Assistance Group (AG) size. The matter is further **REMANDED** for recalculation of the amount of the repayment claim considering the corrected August 2019 AG SNAP entitlement amount and the amount of the Appellant's gross earned income verified from June 2019 through August 2019.

ENTERED this 16<sup>th</sup> day of April 2020.

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**Tara B. Thompson**  
State Hearing Officer