



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801**

**Jolynn Marra
Interim Inspector General**

April 14, 2020

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 20-BOR-1413

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Edgar Buster, [REDACTED] County DHHR

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

[REDACTED],

Appellant,

v.

Action Number: 20-BOR-1413

**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 April 8, 2020, on an appeal filed March 17, 2020.

The matter before the Hearing Officer arises from the March 13, 2020, decision by the Respondent to establish a repayment claim of Supplemental Nutrition Assistance Program (SNAP) benefits against the Appellant.

At the hearing, the Respondent appeared by Edgar Buster, Criminal Investigator. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- M-1 Combined Application and Review Form and Rights and Responsibilities Form dated July 9, 2012
- M-2 SNAP Application Form dated May 7, 2012
- M-3 Combined Application and Review Form and Rights and Responsibilities Form dated October 16, 2012
- M-4 Combined Application and Review Form and Rights and Responsibilities Form dated May 3, 2013
- M-5 Combined Application and Review Form and Rights and Responsibilities Form dated March 28, 2013

- M-6 Combined Application and Review Form and Rights and Responsibilities Form dated November 13, 2013
- M-7 Combined Application and Review Form and Rights and Responsibilities Form dated May 7, 2014
- M-8 Order from the Circuit Court of [REDACTED] County, West Virginia dated June 17, 2003
- M-10* West Virginia Income Maintenance Manual §9.1g (effective July 2012) and §11.2
- M-11 Code of Federal Regulations – 7 CFR §273.18
- M-12 Report of Investigation dated August 24, 2018 and Report of Overpayment Determination

* Exhibits were numbered nonsequential upon submission

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 applied for SNAP benefits in May 2012.
- 2) The Appellant signed SNAP applications and review forms on May 7, 2012, July 9, 2012, October 16, 2012, March 28, 2013, May 3, 2013, November 13, 2013 and May 15, 2014 attesting that she had not been convicted of a drug felony (Exhibits M-1, M-2, M-3, M-4, M-5, M-6 and M-7).
- 3) The Appellant received SNAP benefits from June 2012 through September 2014 for herself and her daughter.
- 4) The Respondent determined that the Appellant was ineligible to be included in SNAP due to a felony drug conviction from 2003 (Exhibit M-8).
- 5) The Respondent established a client error repayment claim of SNAP benefits against the Appellant for \$4,502 that were issued from June 2012 through September 2014 (Exhibit M-12).

APPLICABLE POLICY

West Virginia Income Maintenance Manual §9.1A(2)g (effective July 2012) states that individuals convicted of a felony offense which occurred after August 22, 1996, which involved possession, use or distribution of a controlled substance as defined by section 802 (6) of the Controlled Substance Act are permanently disqualified from participation in SNAP and may not be a separate assistance group (AG).

West Virginia Income Maintenance Manual §11.2 states 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 the AG was entitled to receive.

West Virginia Income Maintenance Manual §11.2.1 states the establishment, notification, and collection of SNAP claims is the responsibility of the Investigations and Fraud Management (IFM) Claims and Collections Unit (CCU). The collection staff members are known as Repayment Investigators (RI). Upon discovery of a potential SNAP claim, the Worker refers the case to the RI through the eligibility system. In determining if a referral is appropriate, the Worker must consider the client's reporting requirements, the Worker's timely action, and the advance notice period.

West Virginia Income Maintenance Manual §§11.2.3 and 11.2.3.A states the number of month(s) for which claims are established depend on whether it is an IPV or UPV.

There are two types of UPVs—client errors and agency errors. A UPV claim may be established when:

- An error by the Department of Health and Human Resources (DHHR) resulted in the overissuance. An unintentional error made by the client resulted in the overissuance
- The client's benefits are continued pending a Fair Hearing decision and the subsequent decision upholds the DHHR's action
- It is determined by court action or Administrative Disqualification Hearing the client did not commit an IPV; the claim is pursued as a UPV
- The AG received SNAP solely because of Categorical Eligibility, and it is subsequently determined ineligible for WV WORKS and/or Supplemental Security Income (SSI) at the time it received it
- The DHHR issued duplicate benefits and the overissued amount was not returned
- The DHHR continued issuance beyond the certification period without completing a redetermination

A client error UPV is only established retroactively for the six-year period preceding the month of discovery. An agency error is only established retroactively for the one-year period preceding the date of the discovery. The RI determines the month in which the overissuance initially occurred as follows.

West Virginia Income Maintenance Manual §11.2.3.A.1 states for Agency Error UPV claims resulting in failure to take prompt action, the first month of overissuance is the month the change would have been effective had the agency acted promptly.

For Agency Error UPV claims resulting in Computation Error, the first month of overissuance is the month the incorrect allotment was effective.

West Virginia Income Maintenance Manual §11.2.3.A.2, Client Error UPV Claims, states when the client fails to provide accurate or complete information, the first month of the overissuance is the month the incorrect, incomplete, or unreported information would have affected the benefit level considering notice and reporting requirements.

West Virginia Income Maintenance Manual §11.2.5.B.2 states the AG is notified of the SNAP claim by computer-generated notification/demand payment letters from the eligibility system. Enclosed with the letter is a repayment agreement, form ES-REPAY-1, and a postage-paid envelope.

West Virginia Income Maintenance Manual §11.2.8.A states claims should be established by the end of the quarter following the quarter of receipt of the referral. However, there are no time limits pertaining to the length of time between discovery of a claim and establishment of the claim.

DISCUSSION

Pursuant to policy, when an assistance group receives more SNAP benefits than it was entitled to receive, a repayment claim is established to recoup the overpayment. Repayment claims are categorized as Intentional or Unintentional Program Violations. Unintentional Program Violations include SNAP overpayments that resulted in agency error or client error.

The Respondent's witness, Investigator Edgar Buster, testified that the Respondent's Front-End Fraud Unit (FEFU) received a referral in 2014 regarding the Appellant's unreported felony drug conviction. FEFU confirmed the Appellant's status as a convicted drug felon and reported its findings to the Appellant's caseworker, whereupon she was removed from the SNAP assistance group. Investigator Buster stated that FEFU referred the case to the Respondent's Criminal Investigations Unit to further develop the case for potential criminal prosecution.

Investigator Buster testified that the Criminal Investigation Unit completed its investigation of the Appellant's case in 2017, but due to a pending change in legislation regarding felony drug convictions and SNAP eligibility, no further action was taken on the Appellant's case until 2019 (Exhibit M-12).

West Virginia House Senate Bill 2459 was passed on February 20, 2019 which allowed convicted drug felons to participate in SNAP effective May 21, 2019 under certain conditions. Investigator Buster contended that after HB 2459 was passed, the administrative decision was made to pursue the Appellant's case for a repayment of overpaid benefits only.

The Appellant argued that a statute of limitations should be considered in her case as six years have passed since she was removed from the SNAP assistance group in 2014. The Appellant contended that she only learned of the repayment claim in March 2020 and she should have been notified of the possibility of a SNAP repayment in 2014. The Appellant claimed she reported her felony drug conviction to her caseworker when she started receiving SNAP benefits in 2012.

Policy stipulates that a client error UPV is only established retroactively for the six-year period preceding the month of discovery. The Respondent discovered that the Appellant received an overpayment of SNAP benefits in 2014 and took corrective action to remove her from the SNAP assistance group at that time. Although the Respondent did not establish the repayment claim until 2019, there is no time restriction from when a repayment claim can be established once the discovery of the overpayment was made.

The Respondent determined that the Appellant's repayment claim was due to client error for her failure to report her status as a convicted drug felon at application and redeterminations. The Appellant contended that she reported her felony drug conviction to her caseworker. However, the Appellant affixed her signature on multiple SNAP applications and review forms attesting that she was not a convicted drug felon and had numerous opportunities to correct any information that was inaccurate. The evidence supports the determination of the repayment claim as client error.

Whereas the SNAP overpayment was discovered in 2014, the Respondent has acted in accordance with policy in pursuing a recoupment of SNAP benefits issued in error from June 2012 through 2014.

CONCLUSIONS OF LAW

- 1) When an assistance group receives more SNAP benefits than it was entitled to receive, a repayment claim is established to recoup the overpayment.
- 2) The Appellant was ineligible to participate in SNAP from June 2012 through September 2014 due to her status as a convicted drug felon.
- 3) Client error repayment claims may be established retroactively from the six-year period preceding the month of the discovery of the SNAP overpayment.
- 4) The evidence presented established that the SNAP overpayment was discovered in 2014, therefore the Appellant must repay SNAP benefits issued in error from June 2012 through September 2014.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to establish a repayment claim of Supplemental Nutrition Assistance Program benefits against the Appellant.

ENTERED this 14th day of April 2020.

**Kristi Logan
State Hearing Officer**