



**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  
[Tara.B.Thompson@wv.gov](mailto:Tara.B.Thompson@wv.gov)

**Jolynn Marra**  
Interim Inspector  
General

September 15, 2020



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 20-BOR-2007

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. 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, MLS  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

cc: Donald Greathouse, Investigations and Fraud Management

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

██████████,

**Appellant,**

v.

**ACTION NO.: 20-BOR-2007**

**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 September 3, 2020 on an appeal filed August 14, 2020.

The matter before the Hearing Officer arises from the July 22, 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 Donald Greathouse, Investigations and Fraud Management. The Appellant appeared *pro se*. Appearing as a witness on behalf of the Appellant was ██████████ (Mr. ██████████). All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Benefit Recovery Referral, dated December 5, 2019
- D-2 Email Correspondence, dated July 28, 2020
- D-3 West Virginia Income Maintenance Manual (WVIMM) § 1.2.4 through 1.2.5
- D-4 DHHR Food Stamp Claim Determination and SNAP Issuance History
- D-5 DHHR Notice, dated August 26, 2019
- D-6 DHHR Case Comments, dated July 1, 2019 through December 30, 2019
- D-7 New-hire Details, for the Appellant
- D-8 Employee Wage Data, for the Appellant
- D-9 New-hire Details, for Mr. ██████████
- D-10 Employee Wage Data, for Mr. ██████████
- D-11 WVIMM Chapter 4 Income Chart

D-12 WVIMM § 11.2

D-13 Code of Federal Regulations § 273.18

**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) The Appellant was a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits for a four-person Assistance Group (AG), which included the Appellant, Mr. [REDACTED], and two minor children (Exhibits D-4 and D-5).
- 2) On July 22, 2020, the Respondent issued a notice advising the Appellant that due to a client error claim being established for "wages/salaries-unreported or incorrect," she was required to repay \$1,292 in over issued SNAP benefits from October 1 to November 30, 2019.
- 3) On July 1, 2019, the Respondent received a new-hire notification for the Appellant (Exhibit D-6).
- 4) The Appellant was employed at [REDACTED] from August 20 to November 30, 2019 (Exhibit D-7).
- 5) The Appellant received \$1,833.70 in wages from [REDACTED], and \$1,820 in wages from [REDACTED] during the third quarter of 2019 (Exhibit D-8).
- 6) On August 26, 2019, the Respondent issued a notice advising the Appellant that the AG's monthly SNAP benefit allotment would increase from \$566 to \$646, effective October 1 through the November 30, 2019 certification end date (Exhibit D-5).
- 7) The August 26, 2019 SNAP allotment decision was based on an AG gross monthly income of \$0 (Exhibit D-5).
- 8) In August 2019, the SNAP income eligibility limit for a four-person AG was \$2,790 (Exhibit D-5).
- 9) The August 26, 2019 notice advised the Appellant that she was required to contact the respondent and report if the AG's income exceeded \$2,790 per month (Exhibit D-5).
- 10) The Appellant received \$646 in monthly SNAP benefits from October through November 2019 (Exhibit D-4).

- 11) On September 10, 2019, the Respondent received a June 27, 2019 new-hire notification for Mr. [REDACTED] (Exhibit D-6).
- 12) Mr. [REDACTED] was employed at [REDACTED] beginning August 1, 2019 (Exhibit D-9).
- 13) Mr. [REDACTED] received \$1,250.37 in wages from [REDACTED], and \$1,020 in wages from [REDACTED] during the third quarter of 2019 (Exhibit D-10).
- 14) Neither the Appellant nor Mr. [REDACTED] reported new employment to the Respondent until December 2, 2019 (Exhibit D-6).
- 15) On December 2, 2019, the Appellant completed a review form which indicated that she was employed at [REDACTED] and Mr. [REDACTED] was employed at [REDACTED] (Exhibit D-6).
- 16) On December 5, 2019, the Appellant reported that she had been fired from [REDACTED] and that Mr. [REDACTED] had been fired from [REDACTED] (Exhibit D-6).
- 17) On December 5, 2019, the Respondent received an employer statement for Mr. [REDACTED] employment at [REDACTED] which indicated that he was no longer employed (Exhibit D-6).
- 18) On December 5, 2019, a benefit recovery referral for over issuance of SNAP benefits due to unreported employment income was submitted to the Respondent's Investigations and Fraud Management (IFM) unit (Exhibit D-1).
- 19) The Respondent completed an investigation and determined that the Appellant was over issued SNAP benefits in October and November 2019.
- 20) The Respondent determined the AG's gross monthly income was \$3,083 for October and November 2019 (Exhibit D-4).

### **APPLICABLE POLICY**

#### **West Virginia Income Maintenance Manual (WVIMM) § 1.2.4 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 § 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. SNAP AGs are subject to limited reporting requirements.

When reported information results in a change in benefit 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 advanced notice.

When a new source of income is reported and the impact on the AGs SNAP benefit would be an increase or decrease in benefits and requested information is not returned, the benefits are closed.

**WVIMM § 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 Assistance Group (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 AG .... These changes must be reported no later than the 10<sup>th</sup> calendar day of the month following the month in which the change occurs.

**WVIMM § 10.4.2.B.3 Information Reported from Third-Party Sources provides in part:**

During the certification period, the agency may receive information about changes in a household's circumstances from new-hire alerts. The worker must pursue clarification of the information and require verification, if needed. The worker must follow up on all unclear information during the certification period when:

- the information presents significantly conflicting information from that used by the DHHR at last certification; or

If the household does not meet this criterion, then the information should not be acted upon until the next SNAP redetermination or contact form.

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

To determine if a claim for benefit repayment must be established or a lost benefit restored, a decision must be made as to whether or not a change was reported in a timely manner. 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 § 11.2.1 Referral Process provides in part:**

The establishment, notification, and collection of SNAP claims is the responsibility of the investigations and Fraud Management (IFM) Claims and Collections Unit (CCU) .... In determining if a referral is appropriate, the Worker must consider the client's reporting requirements, the worker's timely action, and the advanced notice period.

**WVIMM §§ 11.2.3 through 11.2.3.A.2 Procedures for Establishing SNAP Claims provide in part:**

The number of months for which claims are established depends on whether it is an Intentional Program Violation (IPV) or Unintentional Program Violation (UPV). A UPV claim may be established when an error by the DHHR resulted in over issuance or an unintentional error made by the client results in over issuance ...

When the client fails to provide accurate or complete information, the first month of over issuance is the month the incorrect, incomplete, or unreported information would have affected the benefit level considering notice and reporting requirements.

**DISCUSSION**

The Respondent determined that the Appellant had committed an Unintentional Program Violation (UPV) client error by failing to timely report employment income. The Respondent argued that the Appellant received SNAP benefits she was not entitled to during October and November 2019 because the unreported income placed the AG over the SNAP income eligibility limit. As a result, the Respondent implemented a SNAP over issuance repayment claim against the Appellant in the amount of \$1,292. The Appellant contested the repayment claim and SNAP over issuance, argued that Mr. [REDACTED] did not receive any income from [REDACTED] during October 2019, and contended that the AG's income did not exceed the SNAP income eligibility guidelines in October and November 2019. The Appellant contested the Respondent's use of Mr. [REDACTED] quarterly [REDACTED] employment to determine the AG's SNAP eligibility and SNAP benefit monthly allotment during October and November 2019.

The Respondent bears the burden of proof. To verify that the Respondent correctly initiated a SNAP over issuance repayment claim against the Appellant, the Respondent had to prove that the Appellant committed a UPV client error by failing to timely report monthly AG income exceeding \$2,790.

The policy requires the Respondent to consider the Appellant's reporting requirements, the Respondent's timely action, and the advanced notice period when determining the appropriateness of a SNAP repayment claim referral. To determine if a claim for benefit repayment must be established or a lost benefit restored, the policy stipulates that a decision must be made as to whether a change was reported in a timely manner.

### **Reporting Requirements**

Pursuant to the policy, the Appellant is required to report accurate information about the AG's circumstances so that the worker can make a proper determination about the AG's SNAP eligibility and amount of monthly SNAP benefit allotment. The evidence established that the Appellant's August 2019 SNAP eligibility was determined using a \$0 monthly AG income. As such, the AG was subject to limited reporting requirements and was not required to report income changes during the certification period unless the AG's gross income exceeded \$2,790 —130% of the Federal Poverty Level (FPL)— for a four-person Assistance Group (AG). During October to November 2019, the Appellant was in a SNAP eligibility certification period ending November 30, 2019.

The evidence reflected that on August 26, 2019, the Appellant received a SNAP benefit allotment increase, effective October 1, 2019, based on a \$0 monthly AG income. The notice advised the Appellant that the AG was required to report when their income exceeded \$2,790. To determine whether the Appellant committed a UPV client error by failing to report income as required by policy, the amount of income must be established.

### **Amount of Income**

During the hearing, the Appellant testified that she has not consistently reported income and employment changes within 10 days but never intentionally withheld information from the Respondent. The evidence reflected that the Appellant did not report any income or employment changes to the Respondent between July 1 and December 5, 2019. The Appellant argued that even without reporting small amounts of additional income related to overtime or new employment, there was never a period when the AG's monthly income amount exceeded \$2,790 per month.

The Appellant testified that Mr. [REDACTED] employment had been terminated. During the hearing, she could not state specifically when Mr. [REDACTED] had been terminated, but testified that his [REDACTED] employment ended in either the end of September or first week of October 2019. The Appellant testified that pursuant to [REDACTED] "open-door policy," Mr. [REDACTED] had contested his termination and his pay was suspended for "two to three weeks" in October 2019 while the matter was pending. No evidence was entered to verify when Mr. [REDACTED] received his last pay from [REDACTED] prior to his firing or when he resumed receiving [REDACTED] wage payments following the resolution of his employment status issue. No evidence was entered to verify what amount of income Mr. [REDACTED] received in October and November 2019. The Respondent's case comments reflect that on December 5, 2019, [REDACTED] submitted an employer statement to the Respondent. However, no employer statements or pay stubs for the AG's employment during October and November 2019 were submitted as evidence. Mr. [REDACTED] testified that he attempted to obtain his paystubs from [REDACTED] but was no longer able to access them because he is no longer employed at [REDACTED].

The Appellant testified that while Mr. [REDACTED] was not receiving employment income, she was the sole source of income for the AG. No evidence beyond wage data was entered to verify what amount of income the Appellant received from her [REDACTED] employment in October and November 2019. The Respondent testified that the quarterly wages verified by wage data evidence were verified wages reported by the AG's employers to WorkForce West Virginia. During the hearing, the Respondent testified that the wage reporting only reflected quarterly wages, not monthly

wages, and that the wage data information was the best available to the Respondent when determining the AG's amount of income. The Respondent argued that once the Appellant's total gross monthly income was calculated by determining the AG's average wages, the amount of the AG's gross monthly income exceeded SNAP eligibility guidelines. No evidence beyond wage data was entered to verify what amount of income the Appellant received from her [REDACTED] employment in October and November 2019.

The Board of Review has a responsibility to weigh the evidence and testimony presented during the hearing and render a decision based solely on proper evidence received at the hearing. The only evidence entered to show the AG's income amount for October and November 2019 was employee wage data quarterly earnings. No evidence was entered to demonstrate how the Respondent used the wage data to calculate the AG monthly income amount used to establish the repayment claim. No evidence was entered to reflect how it was determined what amount of income was received each month during quarter. The evidence only reflected that the Respondent determined that the AG's monthly income for October and November 2019 was \$3,083.

Although the Appellant did not present any evidence during the hearing to verify the amount of earned wages during October and November 2019, the Appellant contested the Respondent's monthly income calculations and the Respondent had to demonstrate that income calculates were completed according to policy. Because the Appellant is contesting receiving income from [REDACTED] for a two to three week period during October 2019, wage data quarterly earnings without supporting evidence does not prove by a preponderance of evidence that the amount of the Appellant's income during October and November 2019 was properly calculated. Without evidence of proper calculation and verification of the AG's October and November 2019 income amounts, this Hearing Officer cannot affirm that the AG's income exceeded 130% of the FPL during those months. Without verification that the AG's income exceeded SNAP eligibility guidelines, the respondent failed to prove that the Appellant committed a UPV by client error for not reporting employment income exceeding 130% of the FPL.

### **CONCLUSIONS OF LAW**

1. When a SNAP recipient commits an unintentional client error resulting in the over issuance of SNAP benefits, the Respondent may establish an Unintentional Program Violation (UPV) repayment claim against the Assistance Group.
2. The AG was not required to report income changes during the certification period unless the AG's gross income exceeded 130% of the Federal Poverty Level (FPL) for a four-person Assistance Group (AG).
3. The Respondent failed to prove by a preponderance of evidence that the amount of the AG's gross monthly income used by the Respondent to determine the AG's eligibility was correctly calculated.
4. The preponderance of evidence failed to prove that the AG's income exceeded 130% of the FPL in October and November 2019.

5. The preponderance of evidence did not prove that the Appellant committed a UPV by client error for not reporting AG monthly income exceeding 130% of the FPL.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to initiate a repayment claim against the Appellant for October and November 2019 over issued SNAP benefit allotments.

ENTERED this 15<sup>th</sup> day of September 2020.

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**Tara B. Thompson, MLS**  
State Hearing Officer