



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

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Cabinet Secretary

Board of Review
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Jolynn Marra
Inspector General

September 15, 2022



RE: [REDACTED] v. WVDHHR
ACTION NOS.: 22-BOR-1870 and 22-BOR-1871

Dear [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 NOs.: 22-BOR-1870
22-BOR-1871**

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on August 24, 2022 on an appeal filed with the Board of Review on July 28, 2022.

The matter before the Hearing Officer arises from the Respondent's April 18, 2022 decision to implement Supplemental Nutrition Assistance Program (SNAP) and WV WORKS repayment claims against the Appellant.

At the hearing, the Respondent appeared by Donald Greathouse, Investigations and Fraud Management. The Appellant appeared by her attorney, ██████████. Appearing as a witness for the Appellant was ██████████, the Appellant's Authorized Representative. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Benefit Recovery Referrals (BVRF), dated December 29, 2021 and April 14, 2022
- D-2 SNAP Claim Determination and Cash Assistance Claim Determination
- D-3 Medicaid Review Form, dated February 12, 2021
- D-4 Case Comments, dated March 4 through April 13, 2021
- D-5 SNAP Review (Form CSLR), mailed March 11, 2021; Rights and Responsibilities, received March 20, 2020
- D-6 West Virginia Income Maintenance Manual (WVIMM) §§ 1.3.1.A.2 through 1.3.1.A.3, 1.4.18 through 1.4.18.B, 1.5.16 through 1.5.17.A, 11.2, 11.3 through 11.3.3.C

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 received SNAP, WV WORKS, and Medicaid benefits (Exhibits D-1 through D-4).
- 2) The Respondent was notified that the Appellant had an Authorized Representative in July 2020.
- 3) The Respondent did not make a notation of the Appellant's Authorized Representative until March 2022.
- 4) On March 11, 2021, the Respondent generated a CSLR SNAP/Medicaid Review Form requiring the Appellant to complete the form by March 1, 2021 (Exhibit D-5).
- 5) The March 11, 2021 CSLR Form was not mailed to the Appellant's Authorized Representative (Exhibits D-4 and D-5).
- 6) The Appellant completed and returned the CSLR to the Respondent before her scheduled eligibility interview.
- 7) On March 17, 2021, the Appellant submitted a completed MREV Form (Exhibit D-3).
- 8) On March 18, 2021, the Respondent completed a scheduled eligibility phone interview with the Appellant (Exhibit D-4).
- 9) The Respondent did not mail DFA-2, DFA-5, or DFA-RR-1 Forms to the Appellant or her Authorized Representative (Exhibits D-4 and D-5).
- 10) The Respondent did not notify the Appellant or her Authorized Representative that additional signatures were needed to complete her SNAP and WV WORKS review processes.
- 11) On April 13, 2021, the Respondent approved the Appellant's SNAP benefits (Exhibit D-4).

- 12) The Respondent's Worker did not record which forms were relied upon during the Appellant's March 2021 SNAP and WV WORKS eligibility review. (Exhibit D-4).

Supplemental Nutrition Assistance Program

- 13) The Respondent determined the Appellant was ineligible to receive SNAP benefits from June 1, 2021 through March 31, 2022 — due to an agency error — and implemented a SNAP benefit repayment claim of \$6,412 against the Appellant (Exhibits D-1 and D-2).

West Virginia Works- Temporary Assistance for Needy Families

- 14) The Respondent determined the Appellant was ineligible to receive cash assistance benefits from April 1 through October 31, 2021— due to an agency error — and implemented a cash assistance benefit repayment claim of \$3,466 against the Appellant (Exhibits D-1 and D-2).
- 15) On June 2, 2022, the Board of Review determined, in Action No. 22-BOR-1430, that the Respondent incorrectly terminated the Appellant's WV Works benefit eligibility in March 2021 and benefits were retroactively restored (attached hereto as *Attachment A*).

APPLICABLE POLICY

Code of Federal Regulations § 273.18 provides in part:

When benefits are overpaid, a repayment amount is owed. A repayment claim may be established for: Agency Error Claim- any claim for an overpayment caused by an action or failure to take action by the state agency.

West Virginia Income Maintenance Manual (WVIMM) §§ 1.2.2, 1.2.3.A, 1.2.1.C, and 1.2.8 provide in pertinent parts:

Periodic reviews of total eligibility for recipients are mandated by federal law and take place at specific intervals. Failure by the client to complete a redetermination will result in termination of benefits. During the redetermination process, the Worker has a responsibility to ensure that proper case recordings are made to document the Worker's actions and the reasons for such actions.

It is the Worker's responsibility to explain and make available all of the DHHR programs for which the applicant could qualify. The application process is completed when the Worker has approved the application when all eligibility requirements are met, the client is notified of the action taken, and the client receives her initial benefit, if eligible.

WVIMM § 1.6.2 provides in pertinent part:

There is no interview required for any Medicaid coverage group.

WVIMM §§ 1.2.11.A and 1.2.11.B, 1.3.1 through 1.3.2, and 1.4.2 provide in pertinent parts:

The DFA-2 is known as the "CAF" or Common Application Form." The DFA-2 can be used to apply for programs including SNAP, WV WORKS, and Medicaid. The DFA-2 which contains, at a minimum the applicant's name, address, and signature is used to protect the date of application for SNAP, Medicaid, and Emergency Assistance (EA). The DFA-2 may be completed by the Worker in the eligibility system; or completed on paper when circumstances do not permit completion of the application process in the eligibility system.

The DFA-RR-1, or "Rights and Responsibilities" is required EACH time a DFA-2 or DFA-5 is completed. The client must read, or have read to him, all the statements preceding his signature before signing the form. He must also indicate his understanding of, or agreement with, each statement by checking the appropriate block inside the statement. The Worker must provide any explanation and information the client needs to understand the statements [emphasis added]. After completing all applicable sections, the client signs the form. Failure to sign the form results in ineligibility.

When the applicant has completed the application and there is a technical failure that prevents printing the DFA-2, Form DFA-5 must be signed by the applicant, attached, and filed in the case record with the subsequently printed DFA-2. The DFA-RR-1 must also be completed and signed. He must not be required to return to the office to sign the DFA-2 when a DFA-5 has been signed.

If at any time during the application process, the client refuses to sign a completed application form, then it is a withdrawal and appropriate eligibility system action and client notification must be completed. The recording in case comments must specify that the client did not want to sign the application and the reason for the decision. The Worker should always encourage the client to sign the application to avoid a misunderstanding that he was denied the right to apply.

WV WORKS Cash Assistance Claims:

WVIMM §§ 11.3, 11.3.3.A, 11.3.4.B provide in pertinent parts:

Repayment is pursued for cash assistance overpayments made under the Temporary Assistance for Needy Families (TANF) program. When an assistance group (AG) has received more cash assistance than it was entitled to receive, corrective action is taken by establishing a claim for the overpayment.

For Agency Errors, the first month of overpayment is the month the change would have been effective had the agency acted properly. In situations involving ineligibility, the first month of repayment is determined as follows:

- Any month that countable income exceeds the payment level is an ineligible month ...
- In all other cases, including cases that become ineligible due to excessive, redirected child/spousal support, the first month of ineligibility is the month following the month in which the change occurs.

Supplemental Nutrition Assistance Program:

WVIMM § 1.4.10 provides in pertinent part:

If, because of an agency error, an application has not been acted on within the required time limit, corrective action must be taken immediately. If the agency failed to request the necessary verification, the Worker must immediately send a DFA-6 or verification checklist to the applicant and note that the application is pending. When the information is received, benefits are retroactive to the date of application. If the agency failed to act promptly on the information already received, benefits are retroactive to the date eligibility would have been established had the agency acted in a timely manner.

WVIMM §§ 11.2 and 11.2.3.A provide in pertinent parts:

When an Assistance Group (AG) has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing an Unintentional Program Violation (UPV). A UPV claim may be established when an error by the DHHR resulted in benefit overissuance when the DHHR continued issuance beyond the certification period without completing a redetermination. An agency error is only established retroactively for the one-year period preceding the date of discovery.

WVIMM §§ 11.2.3.A.1 and 11.2.8.A provide in pertinent parts:

The first month of overissuance is the month the change would have been effective had the agency acted promptly. 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.

WVIMM §§ 1.2.8 and 1.4.18 provide in pertinent parts:

The application process is completed when the Worker has approved the application, the client is notified of the action taken, and the client receives her initial benefit, if eligible.

SNAP AGs which are due for redetermination and for whom a redetermination has not been completed are automatically closed by the eligibility system on the adverse action deadline of the month when the redetermination is due. A redetermination is not considered complete until SNAP benefits have been confirmed as approved or

denied within the eligibility system.

WVIMM §§ 1.4.18.A, 1.4.18.D, and 1.4.18.E provide in pertinent parts:

Redetermination procedures are the same as application procedures except in the following situations. The following methods can be used for redetermination:

- System generated redetermination forms (CSLE or CSLR)
- WV PATH
- DFA-2 and DFA-RR-1
- DFA-SNAP-1

The eligibility system automatically mails the CSLE/CSLR in the month prior to the last month of certification. The form must be completed and returned prior to the scheduled interview date specified on the CSLR. The form is considered complete when signed and dated by the client or her authorized representative or completed and submitted by WV PATH.

A new application is required when the AG does not submit a redetermination before the end of the certification period. If the CSLE is returned in the month after the end of the certification period, no DFA-2 or DFA-SNAP-1 is required for reapplication. The CSLE/CSLR is used as the application form and benefits are prorated from the date the application is received in that month.

If the CSLE/CSLR is used as an application form, an interview is required. When an AG submits a completed CSLE/CSLR or WV PATH redetermination prior to the scheduled interview date, the Worker must contact the AG at the scheduled time to conduct the telephone interview.

A SNAP redetermination is a reapplication for benefits. Under no circumstances are benefits continued past the month of redetermination, unless a redetermination is completed, and the client is found eligible. If the recipient is no longer eligible, the SNAP AG is closed.

DISCUSSION

The Respondent argued that when the Respondent's Worker incorrectly used a MREV form to complete the Appellant's annual redetermination, an agency error occurred, which resulted in overissuances of SNAP and WV WORKS benefits to the Appellant. The Respondent contended that the Respondent's Worker's improper use of a MREV form to complete a SNAP and WV WORKS eligibility review resulted in an incomplete eligibility review and rendered the Appellant ineligible to receive SNAP and WV WORKS benefits. Therefore, the Respondent argued that a repayment claim must be established for overissuance of SNAP and WV WORKS benefits. The Appellant argued that she met her redetermination responsibilities and was eligible to receive benefits during the repayment claim period.

The Respondent bears the burden of proof and had to prove by a preponderance of the evidence that an agency error resulted in overpayment of SNAP and WV WORKS cash assistance benefits.

To establish a UPV claim, the Respondent had to prove that the Respondent continued the Appellant's benefits beyond her certification period without completing a redetermination. The Appellant did not contest that she was due for a SNAP and WV WORKS eligibility review when she completed her benefit eligibility interview in March 2021; however, no evidence was entered to establish the dates of the Appellant's certification period.

WV WORKS-TANF

The matter regarding the Respondent's failure to supply the Appellant with the proper WV WORKS eligibility review forms during this period has already been adjudicated by the Board of Review. In the hearing conclusion for Board of Review Action No.: 22-BOR-1430, it was determined that the Appellant did not fail to complete her WV WORKS review process and that the Respondent incorrectly terminated her WV WORKS benefit eligibility on that basis. In the instant case, the Respondent did not offer any evidence to establish a new reason for determining the Appellant was ineligible for WV WORKS cash assistance benefits. Therefore, the Respondent's action to implement a WV WORKS cash assistance repayment claim against the Appellant — on the basis of her failure to complete her March 2021 WV WORKS review — cannot be affirmed.

Completion of the SNAP Redetermination Process

The Respondent discovered that required redetermination forms for the Appellant's March 2021 SNAP and WV WORKS eligibility review were not reflected in the Appellant's record. The Respondent testified that a DFA-2 was required to be completed during the annual SNAP benefit eligibility review. The Respondent's representative testified that the Respondent's Worker failed to issue the DFA-2 and DFA-RR-1 to the Appellant. The Respondent contended that the Appellant's benefit eligibility redetermination was incomplete. The Appellant's Authorized Representative testified that every form the Appellant was issued was completed and returned, even if the Respondent failed to correctly enter and process the form. The evidence indicated that a CSLR with the Appellant's mailing address was generated.

The policy states that the DFA-2 can [emphasis added] be used to apply for programs including SNAP, WV WORKS, and Medicaid. However, the policy lists other documents that could be used during the eligibility review process — including the CSLR. The policy stipulates that the eligibility system automatically mails a CSLR that must be completed, signed, and returned before the scheduled interview date. The policy provides that when the CSLR is not returned, the Respondent does not call the client at the scheduled interview time. Pursuant to the policy, when the Appellant completes and submits the CSLR before the scheduled interview date, the Worker must contact the Appellant at the scheduled time to complete the interview. The Appellant was required to complete and return the CSLR Form to the Respondent before her March 18, 2021 interview date.

Pursuant to the policy, a redetermination is complete when the Worker has approved the application, the client is notified of the action taken, and the client receives her initial benefit, if eligible. Further, the policy stipulates that when the CSLE/CSLR is not completed and returned by the end of the certification period, benefits are stopped.

The evidence revealed that the Respondent called the Appellant for her scheduled March 18, 2021 interview and that her benefit eligibility was approved in April 2021. The Respondent argued that the redetermination decision was based on the completed MREV. However, the policy stipulated that no interview was required for any Medicaid coverage group. Although no evidence was submitted to establish which forms were used to determine the Appellant's continued SNAP and WV WORKS eligibility, the evidence verified that the Appellant participated in her March 18, 2021 eligibility interview. The preponderance of evidence supports the Appellant's claim that the CSLR was completed and returned to the Respondent.

No evidence was entered to establish that the Appellant had failed or refused to complete her redetermination. The evidence reflected that the Respondent worker approved the Appellant's SNAP benefit eligibility and the Appellant's initial SNAP benefits were received, thereby, completing the SNAP redetermination process as defined by the policy.

Reliability of the Evidence

The Respondent has the responsibility to maintain accurate records in the Appellant's case. The preponderance of evidence revealed that the Respondent failed to keep a complete record during the Appellant's redetermination process. Pursuant to the evidence, the Respondent's Worker failed to record the Appellant's Authorized Representative in the Appellants case, failed to copy the Authorized Representative on notices, provided a CSLR due date preceding the date of notice issuance, failed to record which forms were used in the redetermination process, and made no notation regarding whether the CSLR was returned. Due to the Respondent's history of record keeping barriers in the Appellant's case, no reliable evidence was entered to rule out that a completed CSLR form was submitted by the Appellant and not recorded by the Respondent in the Appellant's record.

Pursuant to the policy, if an agency error causes a delay processing a SNAP application within the required time limit, corrective action must be taken immediately. The policy stipulates, "When the information is received, benefits are retroactive to the date of application." The policy provides that, "if the agency failed to act promptly on the information already received, benefits are retroactive to the date eligibility would have been established had the agency acted in a timely manner. "

Pursuant to the testimony provided during the hearing, the Appellant believed she had completed her requirements in the SNAP redetermination process. No reliable evidence was entered to establish that the Appellant did not return the CSLR form. When the Respondent discovered that the Appellant's SNAP redetermination forms were not recorded in the Appellant's case and resolved that the forms were absent due to a Respondent Worker's error, the Respondent should have acted to obtain the required forms to complete the record. Once new forms are submitted to the Respondent, the policy stipulates that benefit eligibility be made retroactive. Pursuant to the policy, if the Respondent's Worker failed to act promptly on a CSLR already submitted and not recorded, benefits must be retroactive to the date eligibility would have been established if the Respondent's Worker processed the CSLR in a timely manner.

There is no evidence to show that the Respondent ever attempted to correct the Respondent's

Worker's error to maintain accurate records as required by the policy. During the hearing, the Respondent's representative testified that if the "proper forms" were used during the Appellant's benefit eligibility redetermination, repayment would not be an issue. Because the Respondent failed to obtain information to complete the Respondent's record, the Respondent's determination that the Appellant received more benefits than she was eligible to receive cannot be affirmed. Because an overissuance of SNAP benefits cannot be verified, the Respondent's action to seek SNAP benefit repayment is incorrect.

CONCLUSIONS OF LAW

- 1) A repayment claim may be established when an agency action or failure to take action results in a benefit overpayment.
- 2) The preponderance of evidence revealed that the Respondent failed to keep accurate records during the Appellant's March 2021 SNAP and WV WORKS cash assistance benefit eligibility redetermination.
- 3) The Respondent failed to prove by a preponderance of the evidence that the Appellant failed or refused to complete her SNAP and WV WORKS eligibility redetermination.
- 4) The Respondent failed to prove by a preponderance of the evidence that the Appellant was overissued SNAP or WV WORKS cash assistance benefits.
- 5) The Respondent's implementation of a repayment claim for SNAP and WV WORKS cash assistance benefits was incorrect.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to implement SNAP and WV WORKS cash assistance benefit repayment claims against the Appellant.

ENTERED this 15th day of September 2022.

Tara B. Thompson, MLS
State Hearing Officer