



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Jeffrey H. Coben, M.D.
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

March 14, 2023

[REDACTED]

Re: [REDACTED] v WV DHHR
ACTION NO.: 23-BOR-1056, 23-BOR-1057

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 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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Lisa Snodgrass, Investigations and Fraud Management

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

IN THE MATTER OF:

**ACTION NO.: 23-BOR-1056 (SNAP)
23-BOR-1057 (SCA)**

[REDACTED],

Appellant,

v.

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on February 27, 2023, on an appeal filed February 09, 2023.

The matter before the Hearing Officer arises from the November 07, 2023 determination by the Respondent to establish repayment claims of Supplemental Nutrition Assistance (SNAP) and School Clothing Allowance (SCA) benefits.

At the hearing, the Respondent appeared by Lisa Snodgrass, Repayment Investigator. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was [REDACTED], her daughter. The witnesses were sworn in, and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV DHHR PATH eligibility system printout of Case Comments, dated October 28 - April 28, 2021
- D-2 WV DHHR Application for Low Income Energy Assistance Program (LIEAP), signed December 18, 2020
- D-3 WV DHHR PRC2 Review Form, signed March 01, 2021
- D-4 WV DHHR PATH eligibility system printout of Data Exchange - New Hire Details, dated November 03, 2007 through October 21, 2020
- D-5 WV PATH eligibility system printout of Employee Wage Data, Fourth Quarter 2020 through Third Quarter 2021
- D-6 WV DHHR Income Chart(s)
- D-7 WV DHHR Food Stamp Claim Determination, dated December 2020 through August 2021

- D-8 WV DHHR Food Stamp Claim Calculation Sheet(s), dated December 2020 through August 2021
- D-9 WV DHHR Case Benefit Summary, dated July 07, 2020 through August 04, 2021
- D-10 WV DHHR PATH eligibility system printout of Case Comments, dated October 06, 2021 through January 30, 2023
- D-11 WV OIG Document History, dated January 15, 2020 through October 27, 2022
- D-12 WV DHHR PATH eligibility system printout of School Enrollment for [REDACTED]
- D-13 WV DHHR Application for Emergency Assistance, signed March 17, 2022; WV DHHR Community Resources Notice, dated March 17, 2022; Gas Service Shut Off Notice for [REDACTED]; and Copy of [REDACTED] Bill for [REDACTED]
- D-14 WV DHHR Notice of SNAP Review, dated February 14, 2022
- D-15 WV DHHR PATH eligibility system printout of SNAP Renewal Application, dated September 01, 2022
- D-16 WV DHHR Food Stamp Claim Determination, dated January 2022 through November 2022
- D-17 WV DHHR Case Benefit Summary, dated September 07, 2021 through November 07, 2022
- D-18 WV DHHR Income Chart(s)
- D-19 Electronic Mail (Email) correspondence dated October 17, 2022
- D-20 Circuit Court of [REDACTED] Court Order for Temporary Custody for [REDACTED], entered October 19, 2015; WV PATH eligibility system printout of Employee Wage Data, Second Quarter 2021 and Third Quarter 2021; Circuit Court of [REDACTED] Court Review Hearing for [REDACTED], entered April 20, 2016; and Circuit Court of [REDACTED] Disposition Order for [REDACTED], entered July 18, 2014
- D-21 WV DHHR Cash Assistance Claim Determination, dated July 2022
- D-22 West Virginia Income Maintenance Manual (WVIMM) §§ 1.2.4, 1.2.5, 2.2.1, 2.2.1.A, 10.4.1, 10.4.1.A, 10.4.1.B, 10.4.2, 3.2.1 through 3.2.3, 4.4.3 through 4.4.3.A, and 19.4.1 through 19.4.3.A

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. (Exhibits D-1 through D-17)
- 2) The Appellant's daughter, [REDACTED], was added to the SNAP household Assistance Group (AG) in November 2021. (Exhibit D-10)
- 3) The Appellant received SNAP benefits for herself and [REDACTED] from November 2021 through November 2022. (Exhibits D-10 through D-19; and D-21)
- 4) The Appellant received SCA benefits for [REDACTED] in July 2022. (Exhibits D-10, D-17, and D-21)

- 5) The Appellant signed Rights and Responsibilities (R&R) forms on December 18, 2020, March 16, 2021, March 08, 2022, March 17, 2022, and September 01, 2022, acknowledging the understanding that she was responsible for the repayment of overissued SNAP/SCA benefits whether due to her own error or that of the agency. (Exhibits D-2, D-3, and D-13 through D-15)
- 6) The Respondent alleged the Appellant made false statements regarding [REDACTED] residency and received SNAP and SCA benefits for which she was not entitled to receive.
- 7) On an unknown date, the Respondent initiated a repayment investigation. As a result of the investigation, the Respondent established two (2) SNAP repayment claims and one (1) SCA repayment claim against the Appellant. (Exhibits D-7, D-8, D-11, D-16, and D-21)
- 8) On November 04, 2022, the Respondent issued a notice advising the Appellant that a client error repayment claim of \$200 had been initiated for SCA benefits received in error July 2022, due to unverified school attendance and residency of the Appellant's daughter, [REDACTED].
- 9) On November 07, 2022, the Respondent issued two (2) additional notices advising the Appellant that client error SNAP repayment claims had been initiated due to the overissuance of \$2,551 in SNAP benefits from December 2020 to August 2021, for failure to report earned income; and \$2,351 from January 2022 through November 2022 for falsely reporting daughter [REDACTED] as a member of the AG.
- 10) The Appellant received earned income from employment beginning October 21, 2020 through an unknown date, in August 2021. (Exhibits D-4 and D-5)
- 11) The Appellant earned a quarterly income of: \$5,587.55 for 4th quarter 2020, \$6,716.49 for 1st quarter 2021, \$7,353.57 for 2nd quarter 2021, and \$3,980.23 for 3rd quarter 2021. (Exhibit D-5)
- 12) The Appellant's daughter, [REDACTED], has been residing with the Appellant since November 2021. (Exhibits D-10 and D-20)
- 13) The Appellant's daughter was enrolled in an internet-based school program through the state of [REDACTED]. (Exhibit D-12)
- 14) The Appellant contested the SNAP and SCA repayment claims.

APPLICABLE POLICY

The Code of Federal Regulations, 7 CFR § 273.9, provides, in part:

§ 273.9 Income and deductions.

(a) *Income eligibility standards:* Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligibility standards for SNAP. Households which do not contain an elderly or disabled member shall meet

both the net income eligibility standards and the gross income eligibility standards for SNAP. Households which are categorically eligible as defined in § 273.2(j)(2) or 273.2(j)(4) do not have to meet either the gross or net income eligibility standards. The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(1) The gross income eligibility standards for SNAP shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be 130 percent of the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

7 CFR § 273.9(a)(4), provides, in part:

The monthly gross and net income eligibility standards for all areas will be prescribed in tables posted on the FNS web site, at www.fns.usda.gov/snap

7 CFR § 273.12(d), provides, in part:

Failure to report.

If the State agency discovers that the household failed to report a change as required by paragraph (a) of this section and, as a result, received benefits to which it was not entitled, the State agency shall file a claim against the household in accordance with § 273.18. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if the household's benefits are reduced. A household shall not be held liable for a claim because of a change in household circumstances which it is not required to report in accordance with § 273.12(a)(1). Individuals shall not be disqualified for failing to report a change, unless the individual is disqualified in accordance with the disqualification procedures specified in § 273.16.

7 CFR § 273.18, provides, in part:

(a) General.

(1) A recipient claim is an amount owed because of:

(i) Benefits that are overpaid or

(ii) Benefits that are trafficked. Trafficking is defined in 7 CFR 271.2.

(2) This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations.

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections similar to recent national rates of collection. If you do not meet these standards, you

must take corrective action to correct any deficiencies in the plan.

7 CFR § 273.18(a) (a) provides, in part:

(1) A recipient claim is an amount owed because of:

(i) Benefits that are overpaid or

(ii) Benefits that are trafficked. Trafficking is defined in 7 CFR 271.2.

7 CFR § 273.18(e)(4) provides, in part:

(4) *Repayment agreements.*

(i) Any repayment agreement for any claim must contain due dates or time frames for the periodic submission of payments.

(ii) The agreement must specify that the household will be subject to involuntary collection action(s) if payment is not received by the due date and the claim becomes delinquent.

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.

WV IMM § 6.1.2 provides, in part:

The IEVS provides the DHHR with additional sources of information for use in determining eligibility and the amount of the benefit for applicants and clients. This information is provided to the Worker through data exchanges.

Through the eligibility system, DHHR staff receive information obtained through data exchanges with other governmental agencies. The IEVS procedures ensure that appropriate Internal Revenue Service (IRS) privacy and procedural safeguards are applied in the use of the information. The same precautions with privacy and procedural safeguards apply to information received through the FDH.

Information obtained through IEVS is used for the following purposes:

- To verify the eligibility of the assistance group (AG)
- To verify the proper amount of benefits
- To determine if the AG received benefits to which it was not entitled
- To obtain information for use in criminal or civil prosecution based on receipt of benefits to which the AG was not entitled. Federal regulations require use of the following data exchanges that are provided using the IEVS:

- WorkForce West Virginia –
- Wage and unemployment compensation information (UCI) data is available.
- Internal Revenue Service (IRS) – Unearned income data is available.
- Social Security Administration (SSA) – Retirement, Survivors and Disability Insurance (RSDI), Supplemental Security Income (SSI), and net earnings from self-employment data are available.

NOTE: Federal Medicaid regulations require the utilization of the following IEVS data sources when nothing is returned from the Hub or when discrepancies exist that are not reasonably compatible: WorkForce WV, IRS and SSA.

WV IMM § 6.2.1.A provides, in part:

Wage information is available around the fifth working day of each quarter for the previous quarter. Information received includes:

- Employer name and address;
- Dates of employment; and
- Wages for individuals whose actual earnings are \$255 or greater per quarter than the income used for the AG for the same quarter.

This information is not considered verified upon receipt for SNAP and is subject to independent verification for all programs.

WVIMM § 10.2.1 provides, in part:

The need for case maintenance originates from sources including the client, information from other offices or bureaus within the DHHR, and data system matches and case maintenance functions.

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 advanced notice.

WVIMM § 10.4.2 provides, in part:

All SNAP Assistance Groups (AGs) must report changes related to eligibility and benefit amount at application and redetermination.

WVIMM § 10.4.2.C 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 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 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.

WVIMM § 11.2 provides, in part:

When an assistance group (AG) has been issued more Supplemental Nutrition Assistance Program (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.

WVIMM § 11.2.3.A provides, in part:

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.

WVIMM § 11.2.5.B.1 provides, in part:

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.

WVIMM § 11.3.3.B provides, in part:

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

WVIMM § 19.4.3.A provides, in part:

To be eligible for the WV WORKS School Clothing Allowance or West Virginia School Clothing Allowance Programs, a child must meet all of the following criteria:

- Be a resident of West Virginia, not visiting or on vacation.
- Meet the eligibility requirements or be eligible for WV WORKS for July of the current program year.
- For WV WORKS SCA only, be included in the WV WORKS benefit as a dependent child.
- Be enrolled in public kindergarten through 12th grade, private kindergarten through 12th grade that has been approved by the Board of Education, or a

WV public prekindergarten that could be housed in a child care or Head Start center.

- Children who have reached the age of 5 by July 1 and are enrolled in kindergarten of the current program year.
- The following activities are not considered school enrollment: nursery school, correspondence, or internet courses.
- Homeschooling must be approved by the county Board of Education.

DISCUSSION

The Supplemental Nutrition Assistance Program is governed by the U.S. Department of Agriculture Food Nutrition Services (USDA FNS). The USDA FNS determines the guidelines for States to use for budgeting purposes, including, but not limited to, allowable deduction amounts and maximum SNAP issuance amounts. Monthly SNAP allotments are determined by an individual's countable income, after all allowable deductions have been applied. Pursuant to policy, repayment claims are established for any assistance group that received more SNAP and/or School Clothing Allowance (SCA) benefits than which it was entitled to receive. These claims are the difference between the SNAP entitlement of the assistance group and the SNAP allotment the assistance group was entitled to receive. Repayment claims are established regardless of whether the overissuance of benefit was the result of an agency error or a client error.

On November 04, 2022, the Respondent issued a notice advising the Appellant that a client error repayment claim of \$200 had been initiated for SCA benefits received in error July 2022, due to the unverified school attendance and residency of the Appellant's daughter. On November 07, 2022, the Respondent issued two (2) additional notices advising the Appellant that client error SNAP repayment claims had been established due to the overissuance of \$2,551 in SNAP benefits from December 2020 to August 2021, for failure to report earned income; and \$2,351 from January 2022 through November 2022, alleging the Appellant falsely reported her daughter as a member of the AG. The Respondent asserted that the Appellant signed the Rights and Responsibilities (R&R) form on multiple occasions acknowledging her understanding that she was responsible for repayment of overissued SNAP/SCA benefits whether due to her own error or that of the agency.

(December 2020 to August 2021 Repayment)

The Respondent bears the burden of proof and has to demonstrate by a preponderance of the evidence that the Appellant failed to report earned income received October 2020 through August 2021, thereby causing a client error overissuance of \$2,551 in SNAP benefits from December 2020 to August 2021. The Appellant did not contest the Respondent's allegation, and by her own admission testified to being employed during the dates the Respondent purported. The Appellant argued that her employment was reported to her caseworker; however, she maintains that due to her case worker's shortcomings, she was not asked to provide any employment verification and rationalized that she "just left it at that," believing her income was not sufficient enough to place her "over the threshold" for continued SNAP benefit purposes.

Employee wage data was obtained by the Respondent utilizing a Federal data exchange. The evidence established that the Appellant earned a quarterly income of: \$5,587.55 for 4th quarter 2020, \$6,716.49 for 1st quarter 2021, \$7,353.57 for 2nd quarter 2021, and \$3,980.23 for 3rd quarter 2021. The Appellant disputed the amounts of quarterly income, arguing that the Respondent's numbers were much higher than her actual received wages, though no evidence was provided to

substantiate the Appellant's argument.

The evidence established the Appellant began employment on October 21, 2020. Federal wage data verified the Appellant received a total of \$5,587.55 during the fourth quarter of 2020, which would include the months of October, November, and December 2020. When reviewing the handwritten notes provided by the Respondent on the employee wage data sheet and the food stamp claim calculation sheets, there is no indication that the Respondent included the Appellant's October income when determining her SNAP allotment and repayment obligation for the fourth quarter 2020 time frame. Instead, the Respondent divided the total income by two (2) months, when a weekly calculation should have been used to include the Appellant's October 2020 income. Additionally, when determining the Appellant's third quarter 2021 SNAP allotment and repayment obligation, which would include the months of July, August, and September, there is no indication that the Respondent included the Appellant's August income, warranting the need for a weekly calculation rather than only using July income to calculate the Appellant's repayment obligation for the months of July and August 2021. While the Respondent contends the Appellant received \$2,551.00 in an overissuance of SNAP benefits, the Respondent failed to include all information necessary in order to determine the Appellant's correct client error overissuance calculation.

(January 2022 to November 2022 Repayment)

The Respondent bears the burden of proof and has to demonstrate by a preponderance of evidence that the Appellant falsely reported her daughter as a member of the AG. The Respondent testified that because the Appellant falsely reported her daughter as a member of the AG, a repayment claim was established for an overissuance of \$2,351 in SNAP benefits from January 2022 through November 2022. The Appellant testified that her daughter was reported as a member of the household in November 2021, and argued that a handwritten letter was submitted to the Respondent by her daughter attesting to residency in the Appellant's household. The Respondent denied receiving the letter and argued that because the [REDACTED] Circuit Court ordered the removal of the Appellant's daughter in 2014, she (her daughter) should not have been a member of the household during the time in question due to being a minor.

Case comments reflect the Appellant reported her daughter residing in the home in November 2021. When reviewing the 2014 [REDACTED] Circuit Court order, a birthdate of [REDACTED] was provided for the Appellant's daughter. Because the Appellant's daughter had turned eighteen (18) years of age prior to the inclusion in the Appellant's AG, the Respondent's argument that the Appellant's daughter should not be living in the home is given no weight. Additionally, the evidence provided by the Respondent established that the Appellant's daughter was residing in the State of West Virginia as she earned minimal wages through [REDACTED] - a grocery store located in Spencer, W.Va. - during the second and third quarters of 2021, thus establishing credibility to the Appellant's argument that her daughter had moved from [REDACTED] to West Virginia. Because the Respondent did not provide the evidence necessary to prove the Appellant falsely reported her daughter as a member of the household AG, the repayment claim established for the overissuance of \$2,351 in SNAP benefits from January 2022 through November 2022 cannot be affirmed.

(SCA Repayment)

An additional repayment claim of \$200 was initiated for SCA benefits received in error July 2022, due to unverified school attendance and residency of the Appellant's daughter. The Respondent

has to demonstrate by a preponderance of the evidence that it correctly followed the policy when establishing a repayment claim against the Appellant for SCA benefits received in error July 2022, due to the unverified school attendance and residency of the Appellant's daughter. As established in the SNAP repayment discussion, the Appellant's daughter has been a resident of W.Va. since November 2021. While verification was never received by the Respondent to attest to this matter, the Respondent's own evidence confirmed this fact. The Respondent testified that school attendance verification was requested and not provided by the Appellant. The Appellant argued that her daughter was previously living with her grandmother in the state of [REDACTED] until she was "basically abandoned," therefore, creating a barrier in obtaining current school attendance verification for her daughter's online courses through [REDACTED].

Pursuant to the policy, in order to be eligible for the West Virginia SCA program, a child must be a resident of West Virginia and be enrolled in either a public kindergarten through 12th grade, or private kindergarten through 12th grade that has been approved by the Board of Education. Per policy, internet courses are not considered as eligible school enrollment for SCA benefit purposes. Because the Appellant's daughter, by admission, was enrolled in an internet-based school program provided by the state of [REDACTED] the Respondent was correct in its decision to establish a client error repayment claim against the Appellant for SCA benefits received in July 2022.

CONCLUSIONS OF LAW

- 1) Per policy, when an AG receives more SNAP and SCA benefits than it is entitled to receive a repayment claim is established.
- 2) Because the Appellant failed to report income earned from October 2020 through August 2021, the Appellant's AG received more SNAP benefits than they were entitled to receive from December 01, 2020 through August 31, 2021.
- 3) Because the Appellant's AG received more SNAP benefits than they were entitled to receive due to unreported income from December 01, 2020 through August 31, 2021, the Respondent was correct in initiating a client error SNAP repayment claim due to the overissuance.
- 4) The Respondent failed to properly calculate the Appellant's fourth quarter 2020 income by not including weeks worked in October 2020, requiring recalculation of 4th Quarter earnings.
- 5) The Respondent failed to properly calculate the Appellant's third quarter 2021 income by not including weeks worked in August 2021, requiring recalculation of 3rd Quarter earnings.
- 6) Because the Appellant's daughter, [REDACTED], began residing with the Appellant in November 2021, the Respondent's repayment claim established for the overissuance of \$2,351 in SNAP benefits from January 2022 through November 2022 cannot be affirmed.
- 7) Pursuant to the policy, internet-based educational courses are not considered eligible school enrollment for SCA benefit purposes.
- 8) Because the Appellant's daughter was enrolled in an internet-based educational program, the Respondent was correct in its decision to establish a client error repayment claim against the Appellant for SCA benefits received in July 2022 in error.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to require repayment of SCA benefits in the amount of \$200 for July 2022. It is further the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to require repayment of SNAP benefits for the time period of December 01, 2020 through August 31, 2021. However, the December 01, 2020 through August 31, 2021 repayment amount is hereby **REMANDED** for the recalculation of repayment obligation.

Additionally, it is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to require repayment of SNAP benefits for the time period of January 2022 through November 2022.

ENTERED this 14th day of March, 2022.

Angela D. Signore
State Hearing Officer