



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

**Jeffrey H. Coben, MD
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

April 12, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1286

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,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

Encl: Decision Recourse
Form IG-BR-29

cc: Donald Greathouse, Investigations and Fraud Management

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

██████████,

Appellant,

v.

Action Number: 23-BOR-1286

**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' Common Chapters Manual. This fair hearing was convened on March 21, 2023.

The matter before the Hearing Officer arises from the Respondent's February 16, 2023 implementation of a Supplemental Nutrition Assistance Program repayment claim against the Appellant.

At the hearing, the Respondent appeared by Donald Greathouse, Investigations and Fraud Management. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Benefit Recovery Referral, dated December 9, 2022
- D-2 SNAP Claim Determination
- D-3 SNAP Application, dated October 27, 2020 — signed and unsigned copies.
- D-4 Case Comments, dated February 3 through December 9, 2020
- D-5 SNAP Rights and Responsibilities, signed October 27, 2020
- D-6 Notice, dated October 28, 2020
- D-7 ██████████ Letter and Contributions and Withdrawal Statements, received July 18, 2022
- D-8 SNAP 6 or 12-month Interim Contact Form, dated March 22, 2021
- D-9 Case Comments, dated December 14, 2020 through April 28, 2021
- D-10 SNAP Review Form, received September 28, 2021

- D-11 Case Comments, dated September 9, 2021 through October 6, 2021
- D-12 SNAP 6 or 12-month Interim Contact Form, scanned on April 1, 2022
- D-13 SNAP Review Form, received September 21, 2022
- D-14 Case Comments, dated October 3 through November 29, 2022
- D-15 West Virginia Income Maintenance Manual (WVIMM) Policy Excerpts
- D-16 WVIMM Policy Excerpts
- D-17 Code of Federal Regulations Excerpt

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 SNAP benefits for a one-person Assistance Group (AG).
- 2) On December 9, 2022, the Respondent received a Benefit Recovery Referral alleging, “Client Rec’d \$230 Overissuance in SNAP due to error in come. Client reported paying utils from IRA account. Agency did not verify that client was rec’ing \$2250 mo. In IRA Income” (Exhibit D-1).
- 3) On February 16, 2023, the Respondent issued a notice advising the Appellant was issued more SNAP benefits than he was eligible to receive from April 1, 2021 through September 30, 2022, “because of unearned income.”
- 4) The February 16, 2023 notice advised that a client error claim for \$6,019 had been established against the Appellant.
- 5) On October 27, 2020, the Appellant applied, via inROADS, for SNAP benefits for a one-person AG (Exhibit D-3).
- 6) On the application, the Appellant reported \$2,300 in available liquid checking account assets (Exhibit D-3).
- 7) On the application, the Appellant reported \$250,000 in available liquid assets from an individual retirement account (IRA) (Exhibit D-3).
- 8) The Respondent did not verify the Appellant’s IRA at application (Exhibits D-3 through D-6).
- 9) The Respondent did not consider the Appellant’s IRA when determining the Appellant’s initial SNAP eligibility (Exhibits D-4 and D-6).

- 10) The Appellant was certified to receive \$204 monthly SNAP benefits from December 1, 2020 through October 31, 2021 (Exhibit D-6).
- 11) On October 28, 2020, the Respondent issued a notice that stated, “you must contact this office and report if the gross income of the individuals included in the SNAP benefit increases to more than \$2,128 per month” (Exhibit D-6).
- 12) The Appellant agreed to the Rights and Responsibilities (R&R) listed with his inROADS application (Exhibits D-3 and D-5).
- 13) The Appellant marked, “yes,” to understanding SNAP item No.7 on the R&R form (Exhibit D-5).
- 14) SNAP item No.7 reads, “I understand that if I receive SNAP benefits I have to report when my total household income exceeds the SNAP gross income limit. I also understand that I will be notified what this amount is and that I must report this to DHHR by the 10th of the month after the increase happens ...” (Exhibit D-5).
- 15) The Appellant marked, “yes,” to understanding ALL PROGRAMS item No. 48 on the R&R form (Exhibit D-5).
- 16) ALL PROGRAMS item No. 48 on the R&R form reads, “I understand that my assistance group may be required to repay any benefits paid to or on behalf of it for which I was not eligible because of unintentional errors made by me or the DHHR. I also understand that if I give correct or false information or if I fail to report changes that I am required to report my assistance group may be required to repay any benefits I have received, and I may also be prosecuted for fraud” (Exhibit D-5).
- 17) The Appellant received \$2,250 gross monthly IRA disbursements from February 26, 2021 through August 26, 2022 (Exhibit D-7). The monthly disbursement was comprised of \$1,800 in premature distribution and \$450 federal withholding on periodic payment (Exhibit D-7).
- 18) The Appellant did not contact the Respondent to report the onset of monthly IRA disbursements.
- 19) On March 30, 2021 and April 1, 2022, the Appellant completed SNAP 6 or 12-month Interim Contact forms and indicated \$0 in monthly earned and unearned income (Exhibits D-8 and D-12).
- 20) The March 30, 2021 and April 1, 2022 SNAP Interim Contact Forms did not contain an asset section (Exhibits D-8 and -12).
- 21) On September 28, 2021 and September 21, 2022, the Appellant submitted a SNAP Review form (Exhibits D-10 and D-13).
- 22) On SNAP Review item No.7, the form reads, “Cross out any information that is not correct about members of your household. Write in new information” (Exhibits D-10 and D-13).

- 23) The SNAP review form reflected pre-populated asset information that included the Appellant's IRA (Exhibits D-10 and D-13).
- 24) The Appellant did not cross out or write any new information on SNAP Review item No.7 (Exhibits D-10 and D-13).
- 25) The Appellant did not list any monthly earned or unearned income on the SNAP Review forms (Exhibits D-10 and D-13).
- 26) SNAP Review item No. 12 included the Appellant's R&R (Exhibits D-10 and D-13).
- 27) SNAP Review R&R included agreeing to notify the Respondent within ten days of changes in his household's amount or source of unearned income (Exhibits D-10 and D-13).
- 28) SNAP Review R&R included understanding, "that my assistance group may be required to repay any benefits paid to or on behalf of it for which I was not eligible because of unintentional errors made by me or DHHR. I also understand that if I give incorrect or false information or if I fail to report changes, that I am required to report, my assistance group may be required to repay any benefits I receive and I may also be prosecuted for fraud (Exhibits D-10 and D-13).
- 29) The Appellant certified, by signature, that all statements on the SNAP Review form were read to him, that he understood them, that all information he provided was true and correct, and that he accepted the responsibilities (Exhibit D-10).
- 30) On October 6, 2021 and October 3, 2022, the Respondent's record reflected the Appellant pays his expenses from his IRA (Exhibits D-11 and D-14).
- 31) On October 6, 2021, the Respondent approved the Appellant's continued SNAP eligibility (Exhibit D-11).
- 32) On November 29, 2022, the Respondent's record reflected, "Case was found to be in error from a QC review as agency failed to count IRA distribution of \$2,250 a month as income" (Exhibit D-14).

APPLICABLE POLICY

U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) and West Virginia Income Maintenance Manual (WVIMM) (January 2021) Chapter 4, Appendix A provide in pertinent parts:

For non-categorically eligible households, the AG must meet both the gross and net income limits to be eligible for SNAP. For a one-person AG, the Appellant's gross monthly income had to be equal to or below 130% of the Federal Poverty Level (FPL).

For a one-person AG, 130% of the FPL is \$1,383.

WVIMM § 4.4.3.A (January 2021) provides in pertinent part:

When no AG member is elderly or disabled, the gross income must be equal to, or less than, the gross income limit in Appendix A. If so, the AG qualifies for the disregards and deductions. If the gross income exceeds the amount in Appendix A, the AG is ineligible.

WVIMM §11.2 (January 2021) provides in pertinent parts:

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.

WVIMM § 10.4.2.C (January 2021) 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 § 11.2.3.A (January 2021) provides in pertinent parts:

There are two types of Unintentional Program Violations (UPVs): client errors and agency errors.

A UPV claim may be established when:

- An error made by the Department resulted in the overissuance
- An unintentional error made by the client resulted in the overissuance...

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 discovery.

WVIMM §§ 11.3.3.A.1, 11.2.2.B, and 11.2.3.A.1 (January 2021) provide in pertinent parts:

When the agency error occurs because the agency fails to take prompt action, the first month of overpayment is the month the change would have been effective had the agency acted properly. When an agency error occurs because of a computation error, the first month of overpayment is the month the incorrect payment was effective.

A client error occurs 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 § 4.3 (January 2021) provides in pertinent parts:

No. 72: For determining SNAP eligibility, Retirement Benefits are counted as unearned income.

WVIMM §§ 5.3.1.A and 5.3.2 (January 2021) provide in pertinent parts:

The asset determination must be made as of the date of application. If the assistance group (AG) is not determined categorically eligible, and the AG's countable assets exceed the limit on the date of application, the application must be denied The Worker must record the reason or denial and any subsequent approval.

WVIMM § 5.3.4 (January 2021) provides in pertinent parts:

A client may not have access to some assets. To be considered an asset, the item must be owned by, or available to, the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset.

WVIMM § 5.4 (January 2021) provides in pertinent part:

To be eligible for SNAP, the total amount of countable assets cannot exceed \$2,250.

WVIMM § 10.4.2 and Chapter 4, Appendix A (January 2021) provide in pertinent part:

All SNAP AGs must report changes related to eligibility and benefit amount at application and redetermination. SNAP AGs are subject to limited reporting requirements, and the reporting requirements in this section apply to recipient AGs only ...

When approved with a gross non-excluded income at or below 130% of the Federal Poverty Level (FPL), an 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 original AG.

When approved with a gross non-excluded income above 130% of the FPL, an AG must report when the total gross non-excluded earned and unearned income of the IG exceeds 200% of the FPL for the number of individuals in the original AG.

WVIMM § 10.4.2.D (January 2021) provides in pertinent part:

All SNAP AGs certified for 12 or 24 months must have a report completed in the mid-month of eligibility ... This report differs from a full-scale redetermination ... Changes on the Interim Contact Form PRC-2 are treated as changes reported during the certification period...

Code of Federal Regulations (CFR) 7 CFR § 271.2 (October 2020) provides in pertinent parts:

Error: For active cases results when a determination is made by a quality control reviewer that a household that received SNAP benefits during the sample month is ineligible or received an

incorrect allotment. Thus, errors in active cases involve dollar loss to either participant or the government. For negative cases, an “error” means that the reviewer determines that the decision to deny, suspend, or terminate a household was incorrect.

Overissuance: means the amount by which benefits issued to a household exceeds the amount it was eligible to receive.

7 CFR § 273.2(e)(1) (October 2020) provides in pertinent parts:

The interviewer must not simply review the information that appears on the application but must explore and resolve, with the household, unclear and incomplete information.

DISCUSSION

During the hearing, the Respondent’s representative testified that a SNAP overissuance occurred because the Appellant failed to indicate changes in his unearned income on SNAP Interim Contact forms and SNAP review forms. The Appellant argued that overissued SNAP benefits were due to an agency error, not a client error. The Appellant contended that he reported his IRA at application and the Respondent failed to act on his reported asset, resulting in the Respondent approving the Appellant for SNAP benefits he was not entitled to receive. The Respondent argued that when the Appellant’s IRA became monthly income, not an asset, the Appellant made a client error by not reporting the change timely and omitting the monthly income on his SNAP Interim Contact and Review forms. The Appellant argued that he reviewed each form with the Respondent’s workers and advised them each time that he was using his IRA for income.

When an AG has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing an Unintentional Program Violation (UPV).¹ A UPV claim may be established when an error by the Respondent or an unintentional error made by the Appellant results in the Appellant receiving SNAP benefits he was not entitled to receive.² An agency error UPV may only be established retroactively from the one-year period preceding the date of discovery, whereas, a client error UPV may be established retroactively for the six years preceding the month of discovery.³

At application, the Appellant signed his understanding that he may need to repay any SNAP benefits he received because of unintentional agency or client error.⁴ The Respondent bears the burden of proof and had to demonstrate by a preponderance of the evidence that a client error, not an agency error, resulted in the Appellant receiving an overissuance of SNAP benefits, beginning April 1, 2021.

¹ WVIMM § 11.2; 7 CFR § 273.18(a)

² WVIMM § 11.2.3.A; 7 CFR § 273.18(b)

³ WVIMM § 11.2.3.A

⁴ See Exhibit D-5

Agency Error

An asset determination must be made as of the date of the application and if the AG's countable assets exceed the eligibility limit, the application must be denied.⁵ To be eligible for SNAP benefits, the total amount of the Appellant's countable assets could not exceed \$2,250.⁶ To be considered as an asset, the Appellant's IRA had to be available to the Appellant for disposition.⁷

The Respondent's worker was required to verify the information provided on the application.⁸ The Respondent's worker was prohibited from simply reviewing the information on the application and was required to resolve any unclear or incomplete information with the Appellant.⁹ It is mandatory for the Respondent to verify gross nonexempt income prior to certification.¹⁰ Retirement benefits are counted as unearned income when determining SNAP eligibility.¹¹

The evidence revealed that the Appellant reported accessible liquid assets at application, including his \$250,000 IRA asset.¹² Pursuant to the evidence, the Respondent did not verify or consider the Appellant's IRA as a countable asset or as gross nonexempt income before approving the Appellant's SNAP eligibility, beginning in December 2020.¹³ Had the Appellant's reported available assets been considered, he would have been ineligible for SNAP benefits.

The preponderance of evidence demonstrated that the initial error — that resulted in the Appellant being approved for more SNAP benefits than he was entitled to receive, beginning in December 2020 — was committed by the Respondent. The Respondent may only seek repayment for agency errors for the period one year before the date of discovery. The Respondent is not seeking repayment for the SNAP overissuance period from November 2020 to March 2021. Because the Respondent is not seeking repayment for the period of overissuance due to an agency error, the issue of SNAP overissuance due to an agency error at application is moot.

Client Error

The Respondent certified the Appellant's SNAP eligibility from December 2020 through October 2021.¹⁴ The Respondent's demand notice indicated that a client error SNAP overissuance repayment claim was established against the Appellant because of "unearned income."

For a client error, the first month of the issuance is the month the incorrect, incomplete, or unreported information would have affected the benefit level.¹⁵ To prove that the Appellant committed a client error, the preponderance of evidence had to demonstrate that the Appellant

⁵ WVIMM §§ 5.3.1.A and 5.3.2

⁶ WVIMM § 5.4

⁷ WVIMM §§ 5.3.3 and 5.3.4

⁸ 7 CFR §§ 273.(a)(2); 273.2(d)(1)

⁹ 7 CFR § 273.2(e)(1)

¹⁰ 7 CFR § 273.2(f) through (f)(1)(i)

¹¹ WVIMM § 4.3

¹² See Exhibit D-3

¹³ See Exhibits D-3 through D-6

¹⁴ See Exhibit D-6

¹⁵ WVIMM § 11.2.3.A.2

failed to report monthly IRA payments that resulted in his erroneous receipt of SNAP benefits, beginning April 1, 2021.

The USDA FNS guidelines establish SNAP income eligibility and issuance amounts. Pursuant to the guidelines, the Appellant's gross monthly income had to be equal to or below \$1,383 — 130% of the FPL.

When the Appellant applied for SNAP benefits, he acknowledged his responsibility to report when his total household income exceeded the SNAP gross income limit.¹⁶ The acknowledgement also covered his understanding that he would be notified what the amount was and that he must report this to the Respondent by the 10th of the month after the increase happened.¹⁷ In October 2020, the Appellant was notified that he must report if his gross income exceeded \$2,128 per month.¹⁸

During the hearing, the Appellant testified that he did not indicate the receipt of monthly unearned income on the March 2021 Interim Contact Form or subsequent SNAP review and Interim Contact Forms because he believed he had advised the Respondent of monthly IRA income at his initial application. Although the total amount of the Appellant's IRA asset was reported on his application, the preponderance of evidence did not demonstrate that the Appellant was receiving a monthly IRA disbursement at the time of his initial SNAP application. While the Appellant testified that he disclosed, at application, that he was using his IRA for household expenses, the information supplied by the Appellant's IRA company indicated that monthly IRA disbursement payments began in February 2021.¹⁹

Pursuant to the Appellant's reporting requirements, the Appellant was required to report the onset of his \$2,250 gross monthly IRA disbursements by March 10, 2021. No evidence was submitted to indicate that the Appellant reported the receipt of gross monthly income exceeding \$2,128 by March 10, 2021. The preponderance of evidence demonstrated that the Appellant failed to report the change of his IRA asset to monthly unearned income. The policy provides that when the client fails to report a change in a timely manner and the change could have been made earlier, a claim for benefit repayment may be established.²⁰

The preponderance of evidence revealed that the Appellant's \$2,250 gross monthly IRA payments exceeded the SNAP income eligibility limit. If the Appellant had timely reported the onset of his monthly IRA disbursements, the first month his benefits would have been affected was April 2021.²¹ The Appellant made a client error by not reporting the onset of his monthly IRA disbursement. As the amount of his gross monthly IRA disbursement exceeded 130% of the FPL for a one-person AG, the Appellant was ineligible to receive SNAP benefits, beginning in April 2021.

¹⁶ See Exhibit D-5

¹⁷ See Exhibit D-5

¹⁸ See Exhibit D-6

¹⁹ See Exhibit D-7

²⁰ WVIMM § 10.4.2.C

²¹ WVIMM § 11.2.3.A.2

CONCLUSIONS OF LAW

- 1) An Unintentional Program Violation (UPV) client error SNAP overissuance repayment claim may be established when the Appellant receives more SNAP benefits than he was entitled to receive because the Appellant failed to provide accurate or complete information.
- 2) The first month of overpayment is the month the incorrect, incomplete, or unreported information would have affected the benefit level, considering reporting and noticing requirements.
- 3) The Appellant was required to report the onset of his \$2,250 gross monthly IRA disbursements by March 10, 2021.
- 4) The Appellant was required to report his gross monthly income on SNAP Interim Contact and Review forms.
- 5) The preponderance of evidence revealed that the Appellant failed to report the onset of his gross monthly IRA distribution payments on his 2021 and 2022 SNAP Interim Contact Report and Review forms.
- 6) To be eligible for SNAP benefits, the Appellant's gross monthly income had to be equal to or below \$1,383.
- 7) As the Appellant's gross monthly IRA disbursement exceeded 130% of the FPL for a one-person AG, the Appellant was ineligible to receive SNAP benefits, beginning in April 2021.
- 8) The preponderance of evidence revealed that the Appellant made a UPV client error when he failed to report the onset of \$2,250 gross monthly IRA distribution payments, which resulted in the Appellant receiving SNAP benefits he was ineligible to receive, beginning April 2021.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to implement a SNAP overissuance repayment claim against the Appellant.

Entered this 12th day of April 2023.

Tara B. Thompson, MLS
State Hearing Officer