



**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**

May 18, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1513

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Sarah Ellis, Department Representative

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

IN THE MATTER OF:

ACTION NO.: 23-BOR-1513

██████████,

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 ██████████. 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 May 4, 2023, on a timely appeal filed April 11, 2023.

The matter before the Hearing Officer arises from the March 30, 2023 decision by the Respondent to establish a SNAP repayment claim.

At the hearing, the Respondent appeared by Sarah Ellis. The Appellant appeared pro se. Appearing as a witness for the Appellant was her husband, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----|--------------------------------------------------------------------------------------------------------------------------|
| D-1 | Notice of decision, dated March 30, 2023 |
| D-2 | SNAP claim determination form and calculation documents |
| D-3 | SNAP Notice of QC Error Findings, dated December 13, 2022
West Virginia Income Maintenance Manual, Chapter 1, excerpt |

- D-4 SNAP review documents, dated November 22, 2021
Supporting verifications for SNAP review
- D-5 Notice of decision, dated December 15, 2021
- D-6 Notice of decision, dated December 29, 2021
- D-7 West Virginia Income Maintenance Manual, Chapter 11, excerpt
- D-8 West Virginia Income Maintenance Manual, Chapter 10, excerpt
- D-9 SNAP review documents, dated May 16, 2022
- D-10 West Virginia Income Maintenance Manual, Chapter 10, excerpt

Appellant's Exhibits:

- A-1 Scheduling order excerpt
Screen prints of texts and/or email communications

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.
- 2) The Appellant completed a review of her SNAP eligibility in November 2021. (Exhibit D-4)
- 3) The Respondent mailed a notice dated December 15, 2021 (Exhibit D-5) advising her that her household was denied SNAP benefits because, "Income is too much for you to receive benefits."
- 4) The Appellant reported loss of employment.
- 5) The Respondent did not require a new application for SNAP after the reported loss of employment.
- 6) The Respondent removed the income tied to the lost employment from the Appellant's SNAP case and mailed a notice dated December 29, 2021 (Exhibit D-6) to the Appellant, approving her household for SNAP benefits.

- 7) The Appellant's case was selected randomly for review by the Respondent's Quality Control (QC) unit. (Exhibit D-3)
- 8) Upon QC review, the Appellant's household was found ineligible for SNAP, with the QC reviewer noting, "The case is out of certification and the household is ineligible." (Exhibit D-3)
- 9) The QC reviewer noted that, after the removal of income from the Appellant's SNAP case in December 2021, "QC found no evidence of a new application being submitted or of an interview being completed. (Exhibit D-3)
- 10) The response to the QC findings, completed by Respondent supervisor Charles Cline, noted the 'root cause' of the error as, "Worker reinstated SNAP without application after being closed on income." (Exhibit D-3)
- 11) The Respondent's Investigations and Fraud Management (IFM) unit calculated a SNAP repayment claim of \$7,943 for the period from January 2022, through December 2022, based on the Appellant being totally ineligible for SNAP benefits received while out of certification. (Exhibit D-2)
- 12) The Respondent's IFM unit mailed a notice dated March 30, 2023 (Exhibit D-1), advising the Appellant of the establishment of the \$7,943 SNAP repayment claim.
- 13) The claim was classified as an agency error claim. (Exhibit D-1)

APPLICABLE POLICY

WVIMM § 11.2 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 § 11.2.3.A 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 § 11.2.3.A.1 provides in pertinent parts:

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

WVIMM § 1.4.14 provides in pertinent parts:

The beginning date of eligibility starts the AG's Certification Period.

The client's certification period must be the longest possible period but must not exceed 24 months for AGs in which all adult members are elderly or disabled with no earned income or only excluded earned income. All other AGs are certified for 12 months except for applications that qualify for expedited services and verifications have been postponed.

WVIMM § 1.4.1 provides in pertinent parts:

When the client requests benefits following the denial of an application or redetermination beyond the time limits specified in Section 1.4.9 below, a new application form and interview is required.

Code of Federal Regulations (CFR) 7 CFR § 271.2 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.

DISCUSSION

The Appellant requested a fair hearing to appeal the Respondent's decision to establish a SNAP repayment claim against her household. The Respondent must show by a preponderance of the evidence that it correctly established the SNAP repayment claim.

The Appellant received SNAP benefits and was due for review in November 2021, at the end of her certification period for SNAP. During this review, the Appellant reported income that put the household over the income limit for SNAP. The Respondent notified the Appellant that her household was ineligible for SNAP due to excessive income (Exhibit D-5). Shortly after this, the Appellant reported the loss of the household income that caused the SNAP ineligibility. At this point, the Respondent worker removed the income and approved the Appellant's household in

error. The Appellant was required to complete a new application form and interview with the Respondent worker prior to any approval for a new certification period. This error was discovered by a QC review conducted on the case. The Respondent worker was notified of the error and the Appellant's SNAP case was closed, but only after 12 months of SNAP benefits were issued to the Appellant's household. The failure to take prompt action on the SNAP benefits resulted in an agency error claim beginning in January 2022, and extending for the entire 12-month certification period. The Respondent's IFM unit calculated (Exhibit D-2) and notified (Exhibit D-1) the Appellant's household of an agency error claim in the amount of \$7,943, for the months from January 2022 through December 2022.

The Appellant does not agree with agency error repayment and offered communications (Exhibit A-1) with Respondent employees that are not relevant to the establishment of the claim. Policy allows for the establishment and collection of agency error claims, and the Board of Review is not authorized to set policy or to make policy exceptions.

The Respondent clearly established that the Appellant's household was out of certification for SNAP benefits during 2022 and was totally ineligible for SNAP during that period. The agency error claim began with the correct month and continued for the period allowable for agency error claims. The claim was properly established and noticed. The Respondent correctly established a SNAP repayment claim for \$7,943, for the period from January 2022, through December 2022.

CONCLUSIONS OF LAW

- 1) Because SNAP benefits were approved for the Appellant outside of her certification period, the Appellant received SNAP benefits in error.
- 2) Because the error was caused by Respondent action, the corresponding SNAP repayment claim is an agency error claim.
- 3) Because the Appellant's household was ineligible for the SNAP benefits received from January 2022, through December 2022, the Respondent correctly established an agency error repayment claim for the total amount of SNAP benefits issued during that period.

DECISION

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

ENTERED this _____ day of May 2023.

Todd Thornton
State Hearing Officer