



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County DHHR
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Inspector General

March 15, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1095 and 22-BOR-1096

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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Anisha Eye, [REDACTED] DHHR

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

██████████,

Appellant,

v.

**Action Number: 22-BOR-1095 SCA
22-BOR-1096 SNAP**

**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 February 15, 2022, on an appeal filed January 19, 2022.

The matter before the Hearing Officer arises from the October 15, 2021, and December 6, 2021, decisions 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 Anisha Eye, Repayment Investigator. The Appellant appeared *pro se*. Both witnesses were sworn in, and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Request Notification Form
- D-2 Motion to Dismiss dated January 19, 2022
- D-3 Notice of SNAP Overissuance and Notices of School Clothing Allowance Overpayment dated October 15, 2021
- D-4 Notices of SNAP Overissuance dated December 6, 2021
- D-5 Department of Health and Human Resources Common Chapters Manual §710.16.B
- D-6 West Virginia Income Maintenance Manual §19.4.3.A
- D-7 West Virginia Income Maintenance Manual §19.4.10
- D-8 West Virginia Income Maintenance Manual §11.2
- D-9 West Virginia Income Maintenance Manual §11.3

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.
- 2) The Appellant's daughter, [REDACTED], was added to her case in August 2016.
- 3) The Appellant has court-ordered shared custody of [REDACTED] with [REDACTED] father. [REDACTED] resides with her mother every other weekend, alternating holidays and six (6) weeks each summer.
- 4) The Appellant received SNAP benefits for herself and [REDACTED] from August through October 2016, January through May 2017, September 2017 through February 2019, and July 2019 through June 2021.
- 5) The Appellant received SCA benefits for [REDACTED] in July 2018, July 2019, and July 2020.
- 6) The Respondent sent Advance Notice of Waiver of Administrative Disqualification Hearing to the Appellant on October 14, 2021, including a blank Waiver of Administrative Disqualification Hearing form, which advised the Appellant that she was overissued \$7,658 in SNAP benefits in May 2020.
- 7) The Respondent issued a Notice of SNAP Overissuance on October 15, 2021, advising the Appellant that she was overissued SNAP benefits from August 2016 through October 2016 of \$582 due to client error (Exhibit D-3).
- 8) The Respondent issued three (3) Notices of SCA Overpayment on October 15, 2021, advising the Appellant that she received an overpayment of SCA benefits of \$600 that were issued in July 2018, July 2019, and July 2020 due to client error (Exhibit D-3).
- 9) The Respondent requested an Administrative Disqualification Hearing on October 26, 2021, when no response had been received from the Appellant waiving her right to the Administrative Disqualification Hearing.
- 10) The Respondent alleged that the Appellant made false statements regarding [REDACTED] residency and received SNAP benefits for which she was not entitled to receive.

- 11) The Administrative Disqualification Hearing was convened on November 30, 2021. The Appellant was found to have not committed an Intentional Program Violation in Board of Review Action Number 21-BOR-2281 that was issued on December 1, 2021.
- 12) The Respondent issued three (3) Notices of SNAP Overissuance to the Appellant on December 6, 2021, informing her that she was overissued SNAP benefits from September 2017 through February 2019 of \$2,741 and July 2019 through June 2021 of \$4,074 due to client error (Exhibit D-4).
- 13) The Respondent contended that [REDACTED] resided in [REDACTED] with her father, and as a resident of [REDACTED], she was not eligible to receive SNAP benefits in West Virginia in the Appellant's case.
- 14) The Appellant contested the establishment of the SNAP and SCA repayment claims.

APPLICABLE POLICY

Code of Federal Regulations 7 CFR §273.15(g) states a household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days. Action by the State agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

Code of Federal Regulations 7 CFR §273.15(h) states a request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. If it is unclear from the household's request what action it wishes to appeal, the State agency may request the household to clarify its grievance. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

Code of Federal Regulations 7 CFR §273.16 states that the State agency may combine a fair hearing and an Administrative Disqualification Hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice that hearings will be combined. If the disqualification hearing and fair hearing are combined, the State agency shall follow the timeframes for conducting disqualification hearings. If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not Intentional Program Violation has occurred, the household shall lose its right to a subsequent fair hearing on the amount of the claim. However, the State agency shall, upon household request, allow the household to waive the 30-day advance notice period required by paragraph (e)(3)(i) of this section when the disqualification hearing and fair hearing are combined.

Code of Federal Regulations 7 CFR §740.21 states an Administrative Disqualification Hearing may be consolidated with a fair hearing requested by the household member if the factual issues arise out of the same or related circumstance. This includes the issue of the amount of overissuance associated with the alleged Intentional Program Violation. If the hearings are consolidated, the household must be notified in advance of this fact, and the time frames for Administrative

Disqualification Hearings will be observed. However, the household may waive the 30-day advance notice of the hearing as required in disqualification hearings. If the household member or his or her representative fails to appear at the consolidated hearing, the only issue that may be considered shall be that of an alleged Intentional Program Violation.

West Virginia Income Maintenance Manual §2.2 states to be eligible to receive benefits (SNAP and SCA), the client must be a resident of West Virginia. The client must live within the borders of West Virginia for purposes other than vacation. There is no minimum time requirement for how long the client must live or intends to live in West Virginia. The client is not required to maintain a permanent or fixed dwelling. An individual remains a resident of the former state until he arrives in West Virginia with the intention of remaining indefinitely. Therefore, intent to establish or abandon residency must be known before the state of residence is determined.

West Virginia Income Maintenance Manual §2.2.1.C states regardless of the reason for the absence, any person expected to be absent from the home for a full calendar month or more is not eligible to be included in the SNAP assistance group (AG). Shorter absences do not affect eligibility. This policy applies to visiting, obtaining vocational training or education, and obtaining medical care. This policy applies to in-state and out-of-state travel. Although an individual may meet the residency requirement, he may not be eligible to be included in the AG.

West Virginia Income Maintenance Manual §3.2.1.A.4 states natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same SNAP AG as that parent. There is no required maximum/minimum amount of time the child must spend with a parent for the child to be included in the SNAP AG. If no one is receiving any SNAP benefits for the child, it is assumed that the living arrangements are not questionable, and the child is added to the SNAP AG that wishes to add him. If the child is already listed in another SNAP AG or the other parent wishes to add the child to his SNAP AG, the parents must agree as to where the child “lives” and, ultimately, to which SNAP AG he is added. Where the child receives the majority of his meals, or the percentage of custody, must not be the determining factor for which parent receives SNAP for the child.

West Virginia Income Maintenance Manual §3.4.1.A (WV WORKS and SCA) states in cases of joint custody, only the custodial parent is included. The custodial parent is the one with whom the child(ren) lives more than 50% of the time in a given month. The custodial parent of any child may change from month to month. If the child lives with each parent exactly 50% of the time, the parents must decide who the custodial parent is.

West Virginia Income Maintenance Manual §3.4.1.B states that a child who is absent from his home for 30 consecutive days is ineligible to be included in the WV WORKS or SCA benefit.

West Virginia Income Maintenance Manual §19.4.3.A states that to be eligible for the West Virginia School Clothing Allowance (WVSCA), the 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

- 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 5 by September 1 and are enrolled in Kindergarten of the current program year.

West Virginia Income Maintenance Manual §§11.2 and 11.3 states 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. The claim is the difference between the SNAP entitlement of the AG and the SNAP allotment the AG was entitled to receive.

A UPV claim may be established when:

- An error by the Department of Health and Human Resources (DHHR) resulted in the overissuance
- An unintentional error made by the client resulted in the overissuance
- The client's benefits are continued pending a Fair Hearing decision and the subsequent decision upholds the DHHR's action
- It is determined by court action or ADH the client did not commit an IPV; the claim is pursued as a UPV
- The AG received SNAP solely because of Categorical Eligibility, and it is subsequently determined ineligible for WV WORKS and/or Supplemental Security Income (SSI) at the time it received it
- The DHHR issued duplicate benefits and the overissued amount was not returned
- The DHHR continued issuance beyond the certification period without completing a redetermination

Agency Error UPV Claims are established when:

- Failure to Take Prompt Action: The first month of overissuance is the month the change would have been effective had the agency acted promptly.
- Computation Error: The first month of overissuance is the month the incorrect allotment was effective.

Client Error UPV Claims are established:

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

Department of Health and Human Resources' Common Chapters Manual §710.16.B states the time limit for requesting a hearing shall be 90 days from the effective date of the action.

DISCUSSION

When an assistance group has received more benefits than it was entitled to receive, corrective action is taken by establishing a repayment claim to recoup the benefits issued in error. The

Respondent established a repayment claim of SNAP and School Clothing Allowance benefits issued to the Appellant on behalf of her daughter, contending that the benefits were issued in error.

Combined Hearings

The Respondent requested an Administrative Disqualification Hearing to determine if the Appellant committed an Intentional Program Violation in the receipt of SNAP benefits that were issued from September 2017 through February 2019 and July 2019 through June 2021. In the Board of Review's decision, Action Number 21-BOR-2281 issued on December 1, 2021, the Appellant was found to have not committed an Intentional Program Violation. Although this decision contained language regarding the proposed repayment of SNAP benefits in conjunction with the Administrative Disqualification Hearing, Federal Regulations require that the Appellant receive advance notice if the repayment fair hearing and Administrative Disqualification Hearing would be combined. The Appellant did not receive advance notice that the Administrative Disqualification Hearing and the repayment fair hearing would be combined, therefore, the Appellant was entitled to a separate hearing for the proposed repayment of SNAP benefits issued from September 2017 through February 2019 and July 2019 through June 2021. Any finding of repayment contained within the Board of Review decision 21-BOR-2281 shall be disregarded.

Timeliness

The time limit to request a hearing is ninety (90) days from the effective date of the proposed action. The Respondent notified the Appellant by letters dated October 15, 2021, that she was overpaid \$600 in SCA benefits that were issued for July 2018, July 2019 and July 2020 and that she was overissued \$582 in SNAP benefits that were issued from August through October 2016. The October 15, 2021, Notice of SNAP Overissuance was notice of a repayment of SNAP benefits that were determined to be the result of client error and were not in conjunction with the \$7,658 in SNAP benefits involving the period discussed during the Administrative Disqualification Hearing. The Respondent contended that the Appellant did not request a hearing for the \$582 repayment claim until January 19, 2022, after the 90-day time limit to request a hearing had expired. The Advance Notice of Waiver of Administrative Disqualification Hearing issued to the Appellant on October 14, 2021, advised the Appellant that based upon its investigation, the Respondent alleged that the Appellant received SNAP benefits for which she was not entitled to receive by failing to report that her daughter was not a resident of West Virginia. There was no time frame or amount of SNAP overissuance contained within this letter. The accompanying Waiver of Administrative Disqualification form that was sent to the Appellant on October 14, 2021, indicated that the Appellant was overissued \$7,658 in SNAP benefits issued in May 2020.

In the November 30, 2021, Administrative Disqualification Hearing, the Appellant clearly contested the SNAP repayment claims that were established against her. The notices issued by the Respondent provided inaccurate and conflicting information regarding the SNAP repayment claims proposed against the Appellant. Based upon improper notice by the Respondent regarding which SNAP overissuance periods would be covered during the Administrative Disqualification Hearing, the Appellant appealed the Respondent's proposal to establish a repayment claim of \$582 issued from August through October 2016 within 90 days of the notice of repayment.

The Respondent notified the Appellant of the SCA overissuance by notice dated October 15, 2021. The Appellant contested the SCA repayment during the Administrative Disqualification Hearing, giving testimony regarding her receipt of SCA. While the Respondent could not discuss the SCA program during an Administrative Disqualification Hearing, the Appellant's dispute of the SCA repayment on November 30, 2021 is a timely request for hearing.

Residency

The Respondent argued that [REDACTED] attended school in [REDACTED], where she resided with her father, and as a resident of [REDACTED], she was not eligible to receive SNAP benefits in West Virginia. Policy stipulates that to be eligible for SNAP and SCA benefits in West Virginia, the recipient must live within the borders of West Virginia for purposes other than vacation, with no minimum time period that the recipient must live or intends to live in West Virginia. [REDACTED] split her time between her father and the Appellant. While residing with the Appellant, [REDACTED] lived within the borders of West Virginia with the intent of remaining in West Virginia until such time that she returned to [REDACTED].

Shared Custody

The Appellant has shared custody of [REDACTED], an arrangement that was the result of a Magistrate Court of [REDACTED] court order. [REDACTED], an unemancipated minor, cannot choose where she resides. Likewise, the Appellant must adhere to the court order regarding [REDACTED] living arrangements. SNAP policy states that there is no minimum or maximum amount of time that a child must reside with a parent to be included in the parent's SNAP assistance group. There was no testimony or evidence provided to indicate that [REDACTED] was a SNAP recipient in [REDACTED], therefore, there were no duplication of benefits in West Virginia. Policy also states that children under the age of 22 cannot be a separate SNAP assistance group from the parent with which he or she resides. The Appellant could not receive SNAP benefits in a separate SNAP assistance group from [REDACTED].

WV WORKS/SCA policy states that the custodial parent is the parent in which the child resides with more than 50% of the time in any given month, which may change from month to month. The Appellant had custody of [REDACTED] six weeks each summer, making her the custodial parent during this time period. The Respondent did not provide evidence to establish that the Appellant was not the custodial parent when she applied for SCA benefits for [REDACTED].

Prolonged Absences

An individual who is absent from the home for more than 30 consecutive days is ineligible to be included in the SNAP or WV WORKS/SCA assistance group. Based upon the shared custody agreement of [REDACTED], she was never absent from the Appellant's home for more than 30 consecutive days.

The Appellant was eligible to receive SNAP and SCA benefits for her daughter. [REDACTED] resided in West Virginia with the Appellant pursuant to a court-ordered custody arrangement. [REDACTED] was never absent from the Appellant's home for more than 30 consecutive days and there was no evidence presented to indicate that [REDACTED] received benefits in [REDACTED]. The Respondent's proposed repayment of SNAP and SCA benefits cannot be affirmed.

CONCLUSIONS OF LAW

- 1) The Appellant's daughter is an unemancipated minor who is court-ordered to reside with her father in [REDACTED] and the Appellant in West Virginia.
- 2) As a minor, [REDACTED] cannot choose which state is her state of residency.
- 3) The Respondent failed to establish that [REDACTED] received benefits in [REDACTED].
- 4) [REDACTED] lived in West Virginia with the Appellant pursuant to a court order and was not absent from the Appellant's home for more than 30 consecutive days.
- 5) The Appellant was eligible to receive SNAP and SCA benefits for her daughter.

DECISION

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to establish repayment claims of SNAP benefits issued to the Appellant from August to October 2016, January to May 2017, September 2017 through February 2019, and July 2019 through June 2021 and SCA benefits issued in July 2018, July 2019 and July 2020.

ENTERED this 15th day of March 2022.

Kristi Logan
Certified State Hearing Officer