



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

**Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary**

**Christopher G. Nelson
Interim Inspector General**

December 15, 2023

[REDACTED]

Re: [REDACTED] v WV DHHR
ACTION NO.: 23-BOR-3220, 23-BOR-3221

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

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**HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

IN THE MATTER OF:

ACTION NO.:

23-BOR-3220 (SNAP)

23-BOR-3221 (WVW)

[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' (WV DHHR) Common Chapters Manual. This fair hearing was convened on November 22, 2023, on an appeal filed October 19, 2023.

The matter before the Hearing Officer arises from the October 18, 2023 determination by the Respondent to establish repayment claims of Supplemental Nutrition Assistance Program (SNAP) and West Virginia WORKS (WV WORKS) benefits.

At the hearing, the Respondent appeared by Lisa Snodgrass, 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 WV DHHR Bureau for Social Services Home Study Findings Notice, dated May 31, 2022
- D-2 [REDACTED], Notice of Filing, dated August 29, 2022
- D-3 WV DHHR PATH eligibility system printout of Referral/Claim Comment, dated October 19, 2023
- D-4 WV DHHR PATH eligibility system printout of Case Comments, dated September 09 - 16, 2022
- D-5 [REDACTED] Receipt, dated February 01, 2022
- D-6 WV DHHR PATH eligibility system printout of Case Comments, dated July 29, 2011 to March 02, 2023
- D-7 [REDACTED] Receipt, dated September 07, 2022; and [REDACTED]
[REDACTED] Receipt, dated September 09, 2022
- D-8 WV DHHR PATH eligibility system printout of Case Comments, dated August 16, 2023 to October 10, 2023

- D-9 WV DHHR Provider Payment History, dated November 05, 2021 through October 18, 2022; WV DHHR Provider Payment History, dated November 09, 2022 through January 10, 2023; and WV DHHR PATH eligibility system printout of Payment History, dated October 01, 2022 through September 30, 2023
- D-10 West Virginia Income Maintenance Manual (WVIMM) Chapter 4, Appendix A
- D-11 Electronic Mail (E-Mail) Correspondence, dated October 23, 2023
- D-12 Obituary Memorial ID for [REDACTED]
- D-13 WV DHHR Cash Assistance Claim Determination, dated September 2022; WV DHHR PATH eligibility system printout of Supportive Service Payments, dated November 08, 2002 through September 13, 2022; WV DHHR Food Stamp Claim Determination, dated October 2022 through March 2023; WV DHHR Food Stamp Claim Calculation Sheet(s), dated October 2022 through March 2023; WV DHHR PATH eligibility system printout of Case Benefit Summary, dated May 04, 2022 through March 01, 2023; WV DHHR Cash Assistance Claim Determination, dated October 2022 through August 2023; WV DHHR PATH eligibility system printout of Case Benefit Summary, dated July 25, 2019 through July 01, 2022; WV DHHR PATH eligibility system printout of Case Benefit Summary, dated November 01, 2022 through June 01, 2023; and WV DHHR PATH eligibility system printout of Case Benefit Summary, dated February 01, 2022 through October 01, 2022
- D-14 West Virginia Income Maintenance Manual (WVIMM) §§ 1.2.4, 1.2.5, 10.4.2.C, 10.4.2.D, 3.2.1 through 3.2.3, 1.4.1, 1.4.11 through 1.4.12.B, 3.2.1.B.5 through 3.2.1.C, 4.4.3 through 4.4.3.A, 11.2 through 11.2.5, 11.6 through 11.6.2, 18.19.2 through 18.19.3, and 18.19.8

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 for a four (4) person Assistance Group (AG) (Exhibits D-4, D-8, and D-13)
- 2) The Appellant was receiving WV WORKS Caretaker Relative benefits for children, [REDACTED] who resided in her household. (Exhibits D-3 through D-9, D-11, and D-13)
- 3) On September 13, 2022, the Appellant received WV WORKS Support Service payments for automobile repair in the amount of \$1,495.11, and furniture/appliances in the amount of \$2,597.98. (Exhibits D-3 through D-9)
- 4) On September 20, 2022, the Appellant began receiving Foster Care benefits for children, [REDACTED] (Exhibit D-9)
- 5) The Appellant was ineligible to receive Foster Care benefits for children, [REDACTED], and WV WORKS benefits, simultaneously. (Exhibits D-3 through D-9, D-11, and D-13)

- 6) Due to the onset of Foster Care benefits for children, [REDACTED], the Respondent alleged the Appellant's total household income of \$5,758.50 is over the limit established by policy in order to receive SNAP benefits. (Exhibits D-10 and D-13)
- 7) The Respondent terminated the Appellant's WV WORKS Caretaker Relative cash assistance benefits on August 16, 2023. (Exhibits D-3 through D-9)
- 8) On an unknown date, the Respondent's Front-End Fraud Unit (FEFU) initiated a repayment investigation.
- 9) As a result of the investigation, the Respondent established two (2) WV WORKS repayment claims and one (1) SNAP repayment claim against the Appellant. (Exhibits D-3 through D-9, D-11, and D-13)
- 10) The Respondent alleged the Appellant received SNAP and WV WORKS benefits for which she was not entitled to receive due to failure to report the receipt of Foster Care payments in a timely manner, and for failure to submit receipts for the Support Service payments issued in September 2022 for the purchases of furniture/appliances and automobile repair. (Exhibits D-3 through D-9, D-11, and D-13)
- 11) On October 18, 2023, the Respondent issued three (3) separate notices advising the Appellant that client error SNAP and WV WORKS repayment claims had been initiated due to the overissuance of \$4,758 in SNAP benefits from October 2022 to March 2023, \$5,680 in WV WORKS benefits from October 2022 through August 2023, and \$4,093.09 in WV WORKS Support Service payments.
- 12) The October 18, 2023 Repayment Claims were established as the result of a client error, due to failure to report unearned income (Foster Care benefits).
- 13) The Appellant contested the Respondent's October 18, 2023 Repayment Claims and on October 19, 2023, a Fair Hearing was requested.
- 14) At the time of the hearing, the Appellant contested the Respondent's calculation of \$3,769.50 in earned income for her husband, [REDACTED].
- 15) The Appellant contested the establishment of the WV WORKS Support Service payments issued in September 2022 for purchases of furniture/appliances and automobile repair. (Exhibits D-3 through D-9)
- 16) The Appellant does not dispute the SNAP and WV WORKS repayment claims in the amounts \$4,758 and \$5,680. (Exhibits D-3 through D-9, D-11, and D-13)
- 17) The Appellant failed to submit receipts for WV WORKS Support Service payments issued in September 2022 for purchases of furniture/appliances and automobile repair. (Exhibits D-3 through D-9, D-11, and D-13)
- 18) Earned income for [REDACTED] could not be calculated due to a lack of evidence.

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 § 1.2.4 reads:

The client's responsibility is to provide complete and accurate information about his or her circumstances so that the worker can make a correct determination about his or her eligibility.

WV IMM § 3.3.2 provides, in part:

The child must be living with a specified relative, who assumes primary responsibility for the child's care, in a place established as the relative's home. In order for an individual to be a caretaker relative, he must be a specified relative. Legal custody or guardianship of a child does not, in itself, qualify a person as a specified relative.

WV IMM § 3.4.1.B provides, in part:

Individuals who are recipients of federal, state, or local foster care maintenance or an adoption assistance program are ineligible for WV WORKS/Cash Assistance.

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.

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.

WV IMM § 10.5.2.B provides, in part:

For WV WORKS cases; a client must report all changes in circumstances within ten (10) days.

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.

WV IMM § 11.2.3.A.2 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 § 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.

WV IMM § 11.3 provides, in part:

When an AG has received more cash assistance than it was entitled to receive, corrective action is taken by establishing a claim for overpayment. The claim is the difference

between the amount of benefits received and the amount of benefit to which the AG was entitled to receive.

WV IMM § 11.3.3.A.1 provides, in part:

The first month of overpayment is the month the change would have been effective had the agency acted properly is considered an Agency Error.

WV IMM § 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.

WV IMM § 18.19.8 provides, in part:

When a Case Manager discovers a participant has received an improper cash refund of support service monies instead of goods or services, the amount of the refund will be considered an overpayment of support services and must be recouped.

When a Case Manager issues a support service payment to an individual, a receipt showing that the payment was used as intended may be required. When a receipt is required, it must be provided within 30 days of payment issuance. A DFA-6 or verification checklist must be sent to the participant requesting the receipt. If the participant fails to provide a receipt within this time frame, then recoupment of that support service is required.

DISCUSSION

Policy stipulates that when an assistance group has received more cash assistance than it was entitled to receive, corrective action is taken by establishing a claim for the overpayment. Repayment claims are established regardless of whether the overpayment was a result of agency error or client error. The Respondent had to prove by a preponderance of evidence that it correctly followed the policy when establishing repayment claims against the Appellant.

The Respondent testified that in September 2022, the Appellant began receiving foster care payments for children, [REDACTED], who resided in her household, while simultaneously receiving WV WORKS benefits. Because individuals who are recipients of federal, state, or local foster care maintenance or an adoption assistance program are ineligible for WV WORKS benefits, on an unknown date, the Respondent's Front-End Fraud Unit (FEFU) received an investigation referral in order to determine the possibility of an overissuance of WV WORKS and SNAP benefits. The Respondent alleged that the Appellant received WV WORKS benefits for which she was not entitled to receive due to her failure to report the receipt of Foster Care payments in a timely manner, and for failure to submit receipts for WV WORKS Support Service payments issued in September 2022. The Respondent further alleged that the Appellant also received SNAP benefits she was not eligible to receive due to excessive income after the addition of Foster Care payments. Upon completion of the

investigation, it was determined that the Appellant received an overissuance of \$4,758 in SNAP benefits from October 2022 to March 2023, \$5,680 in WV WORKS monthly benefits from October 2022 through August 2023, and \$4,093.09 in WV WORKS Support Service payments for the month of September 2022.

On October 18, 2023, the Respondent issued three (3) separate notices advising the Appellant that one (1) SNAP and two (2) WV WORKS repayment claims had been initiated in order to recoup the overissuance of benefits. Because the alleged overpayment of SNAP and WV WORKS benefits was caused by the Appellant's failure to report the onset of Foster Care payments, the claim was considered a "*client error*." The Respondent testified that at the time of her September 09, 2022 in person review, the Appellant had the opportunity to report the receipt of Foster Care payments, but failed to do so. At the time of the hearing, the Appellant did not contest the Respondent's decision to establish a SNAP and WV WORKS monthly benefit repayment claims, nor did the Appellant contest the amount of overissuance. However, she did contest the Respondent's decision to establish a repayment claim for the September 2022 WV WORKS Support Services, and the Respondent's determination that a "*client error*" led to the overpayment. The Appellant testified that Foster Care payments had not yet been established during the time period for which the September 13, 2022 WV WORKS Support Service payments were issued.

While it may be true that the Appellant received the Support Service payments prior to the first issuance of Foster Care payments, the Respondent testified to seeking the repayment due to the Appellant's failure to submit receipts as proof that the funds were used for their intended purpose. When questioned if the Appellant provided the Respondent with the receipts for proof of her purchases of furniture/appliances and automobile repair, the Appellant admitted that, while she has not provided them to the Respondent, she does have them in her possession. The Appellant argued that she was unaware of the need to submit them to the Respondent due to her inability to speak with her case worker. The Appellant testified to attempting to call "month after month," leaving multiple voicemails that were all "unanswered, as usual," to report the receipt of Foster Care payments. When she could not reach her worker, the Appellant testified to then placing calls and leaving voicemails to her case worker's Supervisor that were also unreturned. Additionally, the Appellant argued that the Respondent's household income calculation was inaccurate. When the Respondent was questioned about how the Appellant's household income was calculated, the Respondent first testified to using income provided by quarterly wages. However, when asked if evidence was provided in order to confirm the calculations, the Respondent then testified to using the Appellant's self reported income listed in her case.

Per policy, when an AG has been issued more benefits than they were entitled to receive, corrective action must be taken by establishing a repayment claim whether the error was caused by the client or the agency. Policy further stipulates that, individuals who receive federal, state, or local Foster Care payments are ineligible for WV WORKS cash assistance. Once the Appellant began receiving Foster Care maintenance payments for children, [REDACTED], on September 20, 2022, she was no longer eligible to receive WV WORKS Caretaker Relative benefits. Further, this Hearing Officer found that the Appellant's testimony regarding her inability to report was unconvincing. Case comments provided with the evidence reveal instances of the Appellant contacting the Department without issue. So it is implausible to believe the Appellant was unable to report the inception of Foster Care payments

over a time period of several months. Therefore, the Respondent correctly established a repayment of \$5,680 in WV WORKS Caretaker Relative benefits from October 2022 through August 2023. Policy further provides that, when a Case Manager issues a support service payment to an individual, a receipt showing that the payment was used as intended may be required. If a receipt is required, it must be provided within thirty (30) days of payment issuance. Because the Appellant admittedly did not provide the Respondent with proof of purchases of furniture/appliances and automobile repair, the Respondent correctly established a repayment of \$4,093.09 in WV WORKS Support Service payments issued September 2022. Because the overissuance of both WV WORKS benefits was a result of the Appellant's failure to report the unearned income, and provide receipts for proof of purchases made with Support Service payments, as required by policy, the claims are considered a "*client error*." Because the Respondent failed to provide evidence from the case record in order to determine whether the calculation of \$3,769.50 in monthly household earned income is correct, it is impossible for this Hearing Officer to determine the AG's SNAP eligibility and ascertain whether the Respondent's calculation of SNAP overissuance is correct. Therefore, the Respondent's decision to establish a SNAP repayment claim in the amount of \$4,758 cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, individuals who are recipients of federal, state, or local foster care maintenance or an adoption assistance program are ineligible for WV WORKS.
- 2) The Appellant received WV WORKS Caretaker Relative benefits for children, [REDACTED], from October 01, 2022 through August 31, 2023, while simultaneously receiving Foster Care benefits.
- 3) When an AG receives more SNAP and WV WORKS benefits than it is entitled to receive, corrective action must be taken by establishing a repayment claim whether the error was caused by the client or the agency.
- 4) Because the Appellant's AG was ineligible to receive WV WORKS benefits issued October 01, 2022 through August 31, 2023, the Respondent was correct in initiating a WV WORKS repayment claim.
- 5) Because the Appellant did not provide the Respondent with receipts as proof of purchases made during the month of September 2022, the Respondent was correct in initiating a WV WORKS Support Service repayment claim.
- 6) Because the Respondent failed to include all information necessary in order to correctly determine the Appellant's income for SNAP eligibility purposes, the Respondent's repayment claim for the overissuance of SNAP benefits from October 2022 through March 2023 cannot be affirmed.
- 7) Because the overissuance of WV WORKS benefits was a result of the Appellant's failure to report unearned income and proof of purchase to the Respondent as required by policy, the claim is considered a "*client error*."

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to seek repayment of the Appellant's WV WORKS benefits received from October 01, 2022, through August 31, 2023, in the amount of \$5,680, and for WV WORKS Support Service payments received September 2022, in the amount of \$4,093.09, as a result of *client error*. It is further the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to seek repayment of the Appellant's SNAP benefits issued October 01, 2022 through March 31, 2023.

ENTERED this 15th day of December 2023

Angela D. Signore
State Hearing Officer