



May 17, 2024

[REDACTED]

Re: [REDACTED] v WV OIG IFM
ACTION NOS.: 24-BOR-1774, 24-BOR-1775

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 Office of Inspector General. 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: Edgar Buster, III, Investigations and Fraud Management

BEFORE THE WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

IN THE MATTER OF:

[REDACTED]

Appellant,

v.

ACTION NOS.: 24-BOR-1774 (SNAP)
24-BOR-1775 (WVW)

WEST VIRGINIA OFFICE OF
INSPECTOR GENERAL
INVESTIGATIONS AND FRAUD
MANAGEMENT,

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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on April 24, 2024, on an appeal filed March 13, 2024.

The matter before the Hearing Officer arises from the February 21, 2024 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 Edgar Buster, Criminal Investigator, Investigations and Fraud Management. The Appellant appeared *pro se*. Both witnesses were sworn in, and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Income Maintenance Manual (WVIMM) circa 2001-2003 § 20.2
- D-2 WVIMM circa 2002 § 20.3
- D-3 WVIMM circa 1995-1999 § 9.1
- D-4 WVIMM release date unknown § 9.21
- D-5 Redacted Witness Statement, dated July 27, 2001
- D-6 Redacted Witness Statement, dated July 27, 2001
- D-7 Redacted Witness Statement, dated July 31, 2001
- D-8 [REDACTED] Application, signed July 11 and July 18, 2001

- D-9 [REDACTED] Employment Data for [REDACTED] Payroll Check History, and Employment Verification Letter Issued to [REDACTED] Inc, dated July 30, 2001
- D-10 Eligibility system printout of Benefit Payment History for [REDACTED] dated July 30, 2001
- D-11 Employment Verification Letter Issued to [REDACTED] dated October 26, 2001, and Employment Data and Wage History for [REDACTED]
- D-12 Eligibility system printout of Employee Wage Data for [REDACTED] dated October 26, 2001, and [REDACTED] Eligibility system printout of Employer Profile Data
- D-13 Handwritten Overpayment Report for [REDACTED] dated July 2000 through March 2001
- D-14 Handwritten Overpayment Report for [REDACTED] dated April 2001 through July 2001
- D-15 Combined Application and Review Form for Financial Assistance, Medical Assistance, and Food Stamps for [REDACTED], dated May 12, 2000
- D-16 Combined Application and Review Form for Financial Assistance, Medical Assistance, and Food Stamps for [REDACTED] dated March 05, 2001
- D-17 Combined Application and Review Form for Medical Assistance, and Food Stamps for [REDACTED], dated March 05, 2001
- D-18 Combined Application and Review Form for Financial Assistance, Medical Assistance, and Food Stamps for [REDACTED], dated June 22, 2001
- D-19 Circuit Court of [REDACTED] West Virginia Dismissal Order, dated October 24, 2003 - Received and admitted following a post-hearing conference conducted on May 01, 2024

Appellant's Exhibits:

- A1 Screenshot of Criminal Court Case for [REDACTED], dated June 04, 2003 - Received and admitted following a post-hearing conference conducted on May 01, 2024
- A2 Screenshot of Criminal Court Case Dismiss for [REDACTED] dated October 27, 2003 - Received and admitted following a post-hearing conference conducted on May 01, 2024

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 three (3) person Assistance Group (AG). (Exhibits D-14 through D-18)
- 2) The Appellant was a recipient of WV WORKS cash assistance benefits for her children, [REDACTED], for an unknown time period. (Exhibits D-13 through D-18)
- 3) On June 04, 2003, the Respondent initiated a criminal prosecution case against the Appellant in the Circuit Court of [REDACTED] (Hereinafter referred to as Circuit Court), West Virginia, for welfare fraud.
- 4) Due to circumstances undefined in an Order dated October 24, 2003, the Respondent's criminal

prosecution case against the Appellant was dismissed by the [REDACTED] Circuit Court.

- 5) On February 21, 2024, the Respondent issued a notice advising the Appellant that a “client error” SNAP repayment claim had been initiated in order to recoup the over-issuance of \$1,707 in SNAP benefits for the time period of July 01, 2000 through July 31, 2001 due to “Budget Group In Error.”
- 6) An additional notice was issued by the Respondent on the same date, February 21, 2024, advising the Appellant that a “client error” repayment claim had been initiated in order to recoup an over-issuance of \$3,626 in WV WORKS cash assistance benefits for the time period of July 01, 2000 through July 31, 2000 (a one (1) month period) due to “Budget Group In Error.”
- 7) At the time of the hearing, the Respondent alleged the Appellant received SNAP and WV WORKS cash assistance benefits for which she was not entitled to receive due to the Appellant’s failure to report an additional member of her AG and due to unreported income.
- 9) The Appellant contested the Respondent’s establishment of the February 21, 2024 Repayment Claims, and on March 13, 2024, requested a Fair Hearing.
- 10) The Respondent waited approximately twenty-one (21) years after the criminal prosecution case against the Appellant was Dismissed by the Circuit Court before issuing SNAP and WV WORKS cash assistance benefit repayment claims.
- 11) The preponderance of evidence failed to verify that [REDACTED] was a member of the Appellant’s household.
- 12) The Appellant had uncontested earned income during the time period in question (July 01, 2000 through July 31, 2001).
- 13) The preponderance of evidence failed to establish if the Appellant’s income had been previously reported or earned as part of her WV WORKS cash assistance program.
- 14) The Respondent’s February 21, 2024 notice’s of SNAP and WV WORKS over-issuance notice’s do not specify income as a basis to seek repayment.

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 § 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 § 10.4.2 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.

DISCUSSION

The Appellant was a recipient of SNAP benefits for a three (3) person Assistance Group (AG). On June 04, 2003, the Respondent initiated a criminal prosecution case against the Appellant in the Circuit Court of ██████████, West Virginia, for welfare fraud. Due to circumstances undefined in an Order dated October 24, 2003, the Respondent's criminal prosecution case against the Appellant was dismissed by the ██████████ Circuit Court. The grounds for dismissal are unclear, as case details were not available for review. On February 21, 2024, the Respondent issued a notice advising the Appellant that a "client error" SNAP repayment claim had been established in order to recoup an over-issuance of \$1,707 in SNAP benefits for a time period of July 01, 2000 through July 31, 2001, due to "Budget Group In Error." On the same date, an additional notice was issued by the Respondent advising that a "client error" WV WORKS cash assistance repayment claim had also been established in order to recoup an over-issuance of \$3,626 in WV WORKS cash assistance benefits for the time period of July 01, 2000 through July 31, 2000, a one (1) month time frame, due to "Budget Group In Error." The Appellant contested the repayment claims and on March 13, 2024, requested a Fair Hearing.

Federal regulations and agency policy stipulate that if an AG has received more benefits 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. At the time of the hearing, the Respondent alleged that the Appellant received SNAP and WV WORKS cash assistance benefits for which she was not entitled to receive due to "Budget Group In Error." The Respondent testified that the Appellant's failure to report an additional member of her AG, and her failure to report earned income, resulted in an overpayment in both SNAP and WV WORKS cash assistance benefits. The Respondent argued that a lease agreement and multiple witness statements were obtained and can verify that the Appellant's ex-husband, [REDACTED], was living with the Appellant. Additionally, the Respondent obtained employment verification for both the Appellant and [REDACTED], and testified that because the Appellant failed to report both hers and [REDACTED] income, she received \$1,707 in SNAP and \$3,626 in WV WORKS cash assistance program benefits for which she was not entitled to receive for the months of July 2000 through July 31, 2001.

The Appellant questioned why the Respondent waited twenty-one (21) years to issue repayment claims. She argued that because the case had previously been dismissed by the Circuit Court, she did not understand how it could be brought forth again, all these years later. The Appellant denied the Respondent's allegation that [REDACTED] was living with her. She testified that because [REDACTED] watched their children he was at their home often, but he did not live there. She further testified that because [REDACTED] was there often, the landlord required that he be included on the lease. The Appellant argued that [REDACTED] was living with his parents during the time period in question. She provided uncontested testimony that, due to the passage of time, anyone with knowledge of the situation who could corroborate the allegations for her, cannot be called as a witness or called for cross examination because they have all died - including the Respondent witnesses. It should be noted that no evidence was entered into the record to substantiate the Appellant's statement.

When the Respondent was questioned as to why the Department waited twenty-one (21) years to seek repayment, he testified that the previous Investigators had not done so because they were either "awaiting clarification," "being ordered to enter it as an Unintentional Program Violation and refused to do so," or it was because they "never got around to it." This Hearing Officer finds the Respondent's answer conflicting and unsatisfactory. And although there were hand written statements indicating that [REDACTED] was residing in the Appellant's home, evidence based not on personal knowledge, but that of another's statements not made under oath is considered hearsay. The evidence provided by the Respondent is found to be unreliable due to statement redactions and because the authors of the statements were not available for cross examination. Because this Hearing Officer was unable to ascertain the truth of the statements and the validity of the documentation could not be corroborated, any evidence that reflected hearsay was given no weight in the decision of this Hearing Officer. As such, the Respondent's allegation that [REDACTED] was a member of the Appellant's AG cannot be affirmed.

The evidence is clear in that the Appellant did have earned income during the time period in question. However, the Respondent's repayment notices only reflected that the Appellant was over-issued SNAP and WV WORKS cash assistance benefits because of a "Budget Group in Error." The Respondent's February 21, 2024 repayment notices do not list an over-issuance of benefits due to income. As such, any evidence and testimony regarding the Appellant's income was not considered. It should further be noted that the Respondent's February 21, 2024 notice additionally reflects that the Appellant was over-issued \$3,626 in WV WORKS cash assistance benefits for the time period from July 01, 2000 through July 31, 2000 - a one (1) month time period. Presumably, the Respondent's

notice reflects an additional error and a different date was intended.

When reviewing the totality of the case, the regulations stipulate that when deciding whether the Respondent's action was correct, the Board of Review may only consider the evidence presented during the hearing. Due to redactions, hearsay, and documentation that did not provide much detail - such as a printout of [REDACTED] benefit payment history (though nothing was provided for the Appellant), the absence of case comments in order to verify if the Appellant's income was ever reported or even earned as part of her WV WORKS cash assistance program, and the fact that the Respondent sought criminal charges against the Appellant in June 2003 - but now considers the over-issuance as Unintentional Program Violations. It should also be noted that the Appellant's due process was subsequently prejudiced due to the passage of time - approximately twenty-three (23) years later - resulting in the Appellant's inability to compel and/or cross examine all witnesses.

Therefore, the Respondent incorrectly established "client error" SNAP and WV WORKS cash assistance repayment claims for the time period of July 01, 2000 through July 31, 2001 due to "Budget Group In Error."

CONCLUSIONS OF LAW

- 1) Unintentional Program Violation (UPV) repayment claims may be established when a client fails to provide accurate or complete information and the client error results in an over-issuance of SNAP and WV WORKS cash assistance program benefits.
- 2) The preponderance of evidence failed to establish an additional member of the Appellant's Assistance Groups (AGs) during the alleged SNAP and WV WORKS cash assistance over-issuance period.
- 3) The Respondent failed to prove that the Appellant's AG was over-issued SNAP and WV WORKS cash assistance benefits from July 01, 2000 through July 31, 2001.
- 4) The Respondent's February 21, 2024 action to establish a client error UPV repayment claims against the Appellant for over-issued SNAP and WV WORKS cash assistance benefits from July 01, 2000 through July 31, 2001 was incorrect.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to establish Unintentional Program Violation repayment claims against the Appellant.

ENTERED this 17th day of May 2024.

Angela D. Signore
State Hearing Officer