



October 30, 2024

[REDACTED]

RE: [REDACTED] v. OIG/INVESTIGATIONS AND FRAUD MANAGEMENT
ACTION NO.: 24-BOR-3369

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 Human Services. These same laws and regulations are used in all cases to ensure 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: Recourse to Hearing Decision
Form IG-BR-29

cc: Birdena Porter, Investigations and Fraud Management

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

██████████,

Appellant,

v.

Action Number: 24-BOR-3369

**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 ██████████. 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 October 23, 2024.

The matter before the Hearing Officer arises from the October 7, 2024, decision by the Respondent to establish a repayment claim of Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Birdena Porter, Investigations and Fraud Management. The Appellant represented himself. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 SNAP Application dated March 8, 2024
- D-2 Case Benefit Summary
- D-3 Individual Participation History
- D-4 Eligibility Summary from Virginia Department of Social Services
- D-5 Notice of SNAP Overissuance dated October 7, 2024
- D-6 West Virginia Income Maintenance Manual §3.2.1.B.1

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 applied for SNAP benefits on March 8, 2024, for himself and his three children, [REDACTED] (Exhibit D-1).
- 2) SNAP benefits were approved for a four-person assistance group (Exhibits D-2 and D-3).
- 3) The Respondent received a referral alleging that the Appellant's children were receiving SNAP benefits in Virginia.
- 4) The Respondent verified with the Virginia Department of Social Services that [REDACTED] received SNAP benefits in their mother's case in Virginia from August 2023 through August 2024 (Exhibit D-4).
- 5) The Respondent issued a notice of SNAP overissuance to the Appellant on October 7, 2024, advising that a client repayment claim of \$2,151 for SNAP benefits that were issued from March through August 2024 (Exhibit D-5).

APPLICABLE POLICY

Code of Federal Regulations Title 7 §273.18 explains SNAP repayment claims:

(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.

(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred;

(ii) A person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.

(b) ***Types of claims.*** There are three types of claims:

(1) Intentional Program Violation (IPV) claim - any claim for an overpayment or trafficking resulting from an individual committing an IPV.

- (2) Inadvertent Household Error claim - any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.
- (3) Agency Error claim - any claim for an overpayment caused by an action or failure to take action by the State agency.
- (c) **Calculating the claim amount** —
 - (1) *Claims not related to trafficking.*
 - (i) As a State agency, you must calculate a claim back to at least twelve months prior to when you became aware of the overpayment. Do not include any amounts that occurred more than six years before you became aware of the overpayment.
 - (ii) Actual step for calculating a claim are –
 - (A) Determine the correct amount of benefits for each month that the household received an overpayment.
 - (B) Do not apply the earned income deduction to that part of any earned income that the household failed to report timely when this act is the basis for the claim unless the claim is agency error, then apply the earned income deduction.
 - (C) Subtract the correct amount of benefits actually received. The answer is the amount of the overpayment.
 - (D) Reduce the overpayment amount by any EBT amounts expunged for the household’s EBT account.

West Virginia Income Maintenance Manual Chapter 11 explains repayment procedures:

11.2 SNAP Claims and Repayment Procedures

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.

11.2.3 Identifying the Month(s) for Which Claims are Established

The number of month(s) for which claims are established depend on whether it is an IPV or UPV.

11.2.3.A UPV Claims

There are two types of UPVs—client errors and agency errors. A UPV claim may be established when:

- An error by the Department of Human Services (DoHS) 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 DoHS’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 DoHS issued duplicate benefits and the overissued amount was not returned

- The DoHS continued issuance beyond the certification period without completing a redetermination

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 the discovery.

11.2.3.A.1 Agency Errors

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.

11.2.3.A.2 Client Errors

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.

11.2.5 Collecting the Claim

Collection action is initiated against the AG that received the overissuance. When the AG composition changes, collection is pursued against any and all AGs that include a liable debtor. The following persons are equally liable for the total amount of the overpayment and are liable debtors:

- Adult or emancipated minors in the AG
- Disqualified individuals who would otherwise be required to be included
- An unreported adult who would have been required to be in the AG had he been reported
- Sponsors of noncitizen AGs when the sponsor is responsible for the overpayment
- An authorized representative of an AG if he is responsible for the overpayment

For AGs containing a liable debtor that are certified at the time the claim is established, collection activity may begin by recoupment, after the notice period expires. Recoupment by benefit allotment reduction is mandatory for all claims when a liable debtor is certified for SNAP. The eligibility system automatically begins recoupment and posts these payments to the claim.

11.2.6 Determining the Repayment Amount

The minimum amount of repayment is determined as follows.

11.2.6.A UPV Client and Agency Errors

11.2.6.A.1 Current Recipients

The current benefit entitlement is reduced by 10% or \$10, whichever is greater.

11.2.6.A.2 Former Recipients

Lump Sum Payment: One payment is made to pay the claim in its entirety.

Installment Payments: When the AG is financially unable to pay the claim in one lump sum, regular monthly installment payments are accepted. The minimum amount of the monthly payment is \$50.

West Virginia Income Maintenance Manual Chapter 2 explains common eligibility requirements:

2.5 Non-Duplication of Benefits

A client may only receive benefits in one county and state except as specified below.

2.5.1 SNAP

No person may receive SNAP benefits in more than one assistance group (AG) for the same month.

West Virginia Income Maintenance Manual Chapter 3 explains SNAP eligibility determination groups:

3.2.1.A Who Must Be Included

The SNAP AG must include all eligible individuals who both live together and purchase food and prepare meals together, with the exception of residents of shelters for battered persons. An individual cannot be a member of more than one SNAP AG in any month. When an AG member is absent or is expected to be absent from the home for a full calendar month, he is no longer eligible to be included in the AG and must be removed after advance notice.

3.2.1.A.4 Children under Age 22, Living with a Parent

Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same 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.* (emphasis added)

DISCUSSION

Pursuant to policy and federal regulations, when an assistance group 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 assistance group and the SNAP allotment the assistance group was entitled to receive. SNAP benefits for which the assistance group was not entitled to receive must be repaid, regardless of the type of error.

The Respondent established a repayment claim for the Appellant for the duplicate receipt of SNAP benefits for [REMOVED]. The Appellant's children were active SNAP recipients in [REMOVED] in March 2024 when the Appellant applied for SNAP in West Virginia. The Appellant's children received SNAP benefits in [REMOVED] and West Virginia from March through August 2024.

The Appellant contended that he has had primary physical custody of [REMOVED] since August 2021. The Appellant testified that the children's mother has visitation with the children every first, second and third weekend of each month, from 6:00 pm on Friday until 6:00 pm on Sunday. The Appellant purported that the children's mother advised him that she was not receiving benefits for the children, per their custody agreement. The Appellant stated that the children's mother now has primary physical custody of the children due to an increase in his work hours.

Policy specifically prohibits the receipt of SNAP benefits in more than one assistance group for the same month. [REMOVED] were active SNAP recipients [REMOVED] at the time the Appellant applied for SNAP in West Virginia. Although the Appellant argued that the children spent the majority of their time living with him, with the mother only having the children six days a month, policy stipulates that 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 children. Without a court order specifying which parent may receive SNAP benefits for the children, it is up to the parents to decide who will receive SNAP on their behalf.

Whereas the Appellant's children were active SNAP recipients in [REMOVED] at the time of the Appellant's March 8, 2024, SNAP application in West Virginia, [REMOVED] were ineligible to receive duplicate SNAP benefits in West Virginia. The Respondent's decision to establish a client error repayment claim from March through August 2024 for SNAP benefits issued on behalf of [REMOVED] is affirmed.

CONCLUSIONS OF LAW

- 1) When an assistance group has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing a repayment claim, regardless of whether the claim is due to agency error or client error.
- 2) The Appellant's children were active SNAP recipients in [REMOVED] at the time of the Appellant's March 8, 2024, SNAP application.
- 3) No one may receive SNAP benefits in more than one SNAP assistance group in the same month.
- 4) The Appellant's children were ineligible to receive SNAP benefits in West Virginia while receiving SNAP benefits in [REMOVED].
- 5) SNAP benefits issued in error must be recouped.
- 6) The Respondent's decision to establish a client error repayment claim for SNAP benefits issued on behalf of [REMOVED] is affirmed.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to establish a repayment claim of Supplemental Nutrition Assistance Program benefits issued from March 2024 through August 2024.

ENTERED this 30th day of October 2024.

Kristi Logan
Certified State Hearing Officer