



December 18, 2024

[REDACTED]

RE: [REDACTED] v. WV OIG IFM
ACTION NO.: 24-BOR-3631

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 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: Jake Wegman, Esq., Assistant AG
Birdena Porter, Investigations and Fraud Management

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

██████████,

Appellant,

v.

Action Number: 24-BOR-3631

**WEST VIRGINIA OIG 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 December 3, 2024, on an appeal filed November 8, 2024.

The matter before the Hearing Officer arises from the October 31, 2024 determination by the Respondent to implement a Supplemental Nutrition Assistance Program (SNAP) benefit repayment claim against the Appellant.

At the hearing, the Respondent was Represented by Jake Wegman, Esq., Assistant Attorney General (AG). Appearing as a witness for the Respondent was Birdena Porter, Investigations and Fraud Management (IFM). The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia (WV) Department of Human Services (DoHS) SNAP Application, dated April 05, 2022
- D-2 WV DoHS SNAP Eligibility Review Notice, February 21, 2023
- D-3 WV People's Access to Help (PATH) eligibility system printout of Foster Care Payments
- D-4 WV DoHS Food Stamp Claim Determination and Food Stamp Claim Calculation Sheet, dated August 2023 through August 2024
- D-5 WV PATH eligibility system printout of Case Benefit Summary
- D-6 WV PATH eligibility system printout of Case Comments
- D-7 West Virginia Income Maintenance Manual (WVIMM) § 4.3.1

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 submitted an application for Temporary Assistance for Needy Families (TANF), Medicaid, and Supplemental Nutrition Assistance Program (SNAP) benefits for a seven (7) person Assistance Group (AG) on April 05, 2022. (Exhibit D-1)
- 2) In October 2022, the Appellant began receiving Foster Care benefits for her five (5) [REDACTED] (Exhibits D-3, D-5, and D-6)
- 3) On an unknown date, October 2022, the Respondent terminated the Appellant's TANF benefits due to the onset of Foster Care benefits; however, the Appellant's SNAP benefits remained open. (Exhibits D-1 through D-5)
- 4) On March 14, 2023, at the time of her review, the Appellant again reported receiving foster care benefits; however, the Respondent worker failed to update the unearned income in the Appellant's case and SNAP benefits were continued. (Exhibit D-6)
- 5) On an unknown date, a repayment referral was received from the Claims and Collections Unit (CCU) alleging that, because the Respondent failed to include the unearned income (foster care payments) into the Appellant's case, she was ineligible for SNAP benefits received during the period of August 2023 through August 2024 due to "agency error."
- 6) Due to the onset of Foster Care benefits for [REDACTED] the Respondent alleged the Appellant's total household income of \$6,670 is over the income limit for SNAP eligibility. (Exhibit D-3)
- 7) As a result of the referral, the Respondent established two (2) SNAP repayment claims against the Appellant totaling \$10,486. (Exhibit D-4)
- 8) On October 31, 2024, the Respondent issued two (2) separate notices advising the Appellant that agency error repayment claims had been initiated due to the over issuance of \$6,291 in SNAP benefits from August 2023 to March 2024, and \$4,195 in SNAP benefits from April 2024 through August 2024.
- 9) The Appellant contested the Respondent's October 31, 2024 Repayment Claims and requested a Fair Hearing on November 08, 2024.
- 10) The Appellant did not dispute the SNAP repayment claim amounts of \$6,291 and \$4,195.

11) The Appellant did not dispute the amount of income calculated by the Respondent.

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 (WV IMM) § 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 Chapter 4, Appendix A and Appendix B provides, in part:

For a seven (7) person AG, the gross monthly income limit is \$3,945.

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 § 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.

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 § 11.3.3.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.

DISCUSSION

The Appellant was a recipient of SNAP benefits for a seven (7) person Assistance Group (AG). On October 31, 2024, the Respondent issued a notice advising the Appellant that two (2) “agency error” SNAP repayment claims had been established in order to recoup an over-issuance of \$10,486 in SNAP benefits for a time period of August 2023 through August 2024, due to excluded “Unearned Income.” The Appellant contested the repayment claims and on November 08, 2024, requested a Fair Hearing. 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, on an unknown date, a repayment referral was received by Investigations and Fraud Management (IFM) Claims and Collections Unit (CCU). The referral alleged that, because the Respondent worker failed to include the receipt of foster care payments into the Appellant’s case, the Appellant received SNAP benefits during the period of August 2023 through August 2024 for which she was not entitled due to an “agency error.” The Respondent testified that in October 2022, when the Appellant began receiving the foster care payments for

her five (5) grandchildren, the Appellant's total household income increased to \$6,670. Because the income limit for a seven (7) person AG – for SNAP purposes – is \$3,945, the Appellant was over the limit established by policy to receive SNAP benefits. The Respondent testified that even though the Appellant did report the receipt of foster care payments on two (2) prior occasions, the Respondent worker failed to update the Appellant's case, resulting in an overpayment of \$10,486 in SNAP benefits for a time period of August 2023 through August 2024. She further testified that even though it is the agency who is at fault, a repayment claim must still be established. However, because it was an "agency error," the policy only allows the Respondent to retroactively establish repayment claims for benefits that were received during the (1) year time period preceding the date of discovery.

At the time of the hearing, the Appellant did not contest the Respondent's income calculation used to determine the AG's SNAP eligibility or the SNAP repayment claim amounts. In fact, the Appellant testified to the contrary when she stated that the Respondent's calculation of income and benefit receipt amounts were correct. The Appellant argued that because she reported the AG's receipt of foster care payments as required, and because the Department erred by not acting upon the information provided, she should not be responsible for repayment of the over-issuance. She further testified that, at the time of application, she had just gained custody of her grandchildren and "had a hundred papers" that she was "told to sign." The Appellant then provided conflicting testimony by arguing that at that time of application, she was not informed that she would be required to repay benefits received due to an agency error, and later testifying that she had "no idea" if it was explained to her that she would still be responsible for repayment even if the agency were at fault.

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 or client error. When deciding whether the Respondent's action was correct, the Board of Review may only consider the evidence and testimony presented during the hearing. When reviewing the evidence, the Appellant's April 05, 2022 application and March 14, 2024 review included the Appellant's signed Rights and Responsibilities forms acknowledging that she understood her AG may be required to repay any benefits for which the AG was not eligible because of errors made by either the Appellant or the Respondent. While the Appellant's argument that her main concern at the time of application was the safety and welfare of her grandchildren is plausible, it is important to read and understand all documentation prior to signing in agreement.

When reviewing the evidence, the Respondent calculated the AG's gross monthly income to equal \$6,670. Because this amount was not contested by the Appellant, it was compared to the policy to determine the AG's SNAP eligibility. Pursuant to policy, the gross income limit for a seven (7) person household for SNAP eligibility purposes is \$5,129. Because the Appellant's monthly gross income of \$6,670 is excessive for SNAP eligibility purposes, and because the Respondent

established the repayment claim within the applicable timeframes, the Respondent acted in accordance with policy to recoup \$10,486 in SNAP benefits issued due to an “agency error” from August 2023 through August 2024.

CONCLUSIONS OF LAW

- 1) The Respondent failed to update the Appellant’s income for SNAP eligibility and allotment purposes.
- 2) Because the Respondent failed to update the Appellant’s income for SNAP eligibility and allotment purposes, the Appellant’s AG received more SNAP benefits than they were entitled.
- 3) Pursuant to policy, when an assistance group has received SNAP benefits that it was not entitled to receive, corrective action is taken by establishing a repayment claim, regardless of whether the over-issuance was a result of an agency error or client error.
- 4) Because the Appellant’s AG received more SNAP benefits than they were entitled, the Respondent acted correctly to initiate a repayment claim to recoup SNAP benefits over-issued to the AG from August 2023 through August 2024.
- 5) Because the over-issuance of SNAP benefits was caused by the Respondent’s failure to include the AG’s unearned income (foster care payments), the Respondent acted in accordance with policy to establish the repayment as an “agency error.”

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent’s decision to establish an *agency error* repayment claim against the Appellant for Supplemental Nutrition Assistance Program benefits issued from August 2023 through August 2024 for which she was not eligible to receive.

ENTERED this 18th day of December 2024.

**Angela D. Signore
State Hearing Officer**