



January 3, 2025

[REDACTED]

RE: [REDACTED] v. WV DoHS/BFA
ACTION NO.: 24-BOR-3522

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,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Heather Olcott, Assistant Attorney General

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

████████████████████,

Appellant,

v.

Action Number: 24-BOR-3522

**WEST VIRGINIA DEPARTMENT OF
HUMAN SERVICES
BUREAU FOR FAMILY ASSISTANCE,**

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 17, 2024.

The matter before the Hearing Officer arises from the Respondent's August 1, 2024 decision to implement a Supplemental Nutrition Assistance Program (SNAP) repayment claim against the Appellant's household.

At the hearing, the Respondent appeared by Assistant Attorney General Heather Olcott. Appearing as a witness for the Respondent was Investigations and Fraud Management Repayment Investigator Abigail Vandegrift (hereafter, Ms. Vandegrift). The Appellant appeared *pro se*. Appearing on behalf of the Appellant was ██████████ the Appellant's husband. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Summary
Benefit Recovery Referral, dated February 7, 2024
- D-2 West Virginia Income Maintenance Manual (WVIMM) Chapter 1 excerpts
- D-3 WVIMM Chapter 11 excerpts
- D-4 Food Stamp Claim Determination
- D-5 People's Access To Help (PATH) SNAP renewal, submitted February 27, 2023
- D-6 ██████████ Earnings:
February 7 and February 22, 2023
- D-7 Notice, dated February 3, 2024

- D-8 Notice, dated March 15, 2023
- D-9 SNAP Interim Contact Form, received on September 5, 2023
- D-10 Notice, dated September 7, 2023
- D-11 Case Comments:
 - March 1 through September 2023
 - February 7 through August 6, 2024
- D-12 Email from Appellant, dated October 7, 2024

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) On August 1, 2024, the Respondent issued a notice advising the Appellant a SNAP over issuance repayment claim of \$6,639 had been initiated for over issuance of SNAP benefits she was not entitled to from April 1, 2023 through February 29, 2024, due to an agency error related to “wages/salaries-unreported/incorrect”.
- 2) On February 7, 2024, the Respondent submitted Benefit Recovery Referral [REDACTED] to West Virginia Office of Inspector General (OIG) Investigations and Fraud Management (IFM). The referral was assigned to Ms. Vandegrift, an IFM Repayment Investigator (Exhibit D-1).
- 3) The February 7, 2024 referral alleged: “Client had an overissuance [sic] of \$615 monthly since March of 2023. Income was not entered correctly. Went from \$861 to \$246” (Exhibit D-1).
- 4) The Appellant received \$802 in monthly SNAP benefits for a four-person household, from April through September 2023 (Exhibits D-4 and D-8).
- 5) The \$802 SNAP allotment calculation was based on \$1,330.40 gross monthly earned income and the application of a \$266 earned income deduction, \$193 standard deduction, and \$414.89 shelter/utility deduction (Exhibit D-8).
- 6) The Respondent considered a \$939 SNAP maximum allotment when determining the Appellant’s \$802 SNAP allotment (Exhibit D-8).
- 7) The Appellant received \$861 in monthly SNAP benefits for a four-person household, from October 2023 through February 2024 (Exhibit D-4).

- 8) The \$861 SNAP allotment was based on \$1,330.40 gross monthly earned income, application of a \$266 earned income deduction, a \$208 standard deduction, and a \$483.39 shelter/utility deduction (Exhibit D-10).
- 9) The Respondent considered a \$973 SNAP maximum allotment when determining the \$861 SNAP allotment (Exhibit D-10).
- 10) On February 27, 2023, the Appellant submitted the household's SNAP renewal form via PATH (Exhibit D-5).
- 11) The Appellant electronically signed that she read, understood, and agreed to the Rights and Responsibilities (Exhibit D-5).
- 12) The *Rights and Responsibilities* indicated the assistance group (AG) may be required to repay any benefits paid to or on behalf of it for which the AG was not eligible because of unintentional errors made by the AG or the Respondent (Exhibit D-5).
- 13) The Appellant reported ongoing employment with [REDACTED] and indicated she received \$1,589.00 in earned income twice per month (Exhibit D-5).
- 14) The Appellant's reported monthly shelter costs included \$65.75 property tax, \$62.83 homeowners' insurance, and \$304.39 mortgage (Exhibit D-5).
- 15) The Appellant's reported monthly utility costs included \$220.64 phone, \$14.17 liquid propane, and \$315.78 electricity (Exhibit D-5).
- 16) The Appellant submitted earning verification records that reflected gross earned income of \$1,596.48 paid on February 7, 2023; \$1,463.44 paid on February 22, 2023; and \$1,197.36 on March 7, 2023 (Exhibit D-6).
- 17) The Appellant's February 7 and February 22, 2023 pay record reflected earnings for 88 hours (Exhibit D-6).
- 18) The Appellant's March 7, 2023 pay record reflected earnings for 64 hours (Exhibit D-6).
- 19) On March 2, 2023, the Appellant completed a SNAP eligibility interview with Respondent Worker [REDACTED] (Exhibit D-11).
- 20) Respondent Worker [REDACTED] recorded that the Appellant was "paid biwkly [sic]" (Exhibit D-11).
- 21) On March 14, 2023, the Appellant submitted verification of shelter costs and income (Exhibit D-11).
- 22) On March 14, 2023, Respondent Worker [REDACTED] recorded, "used gross on both checks" and "snap will pass for \$802 4/1/23" (Exhibit D-11).

- 23) On September 5, 2023, the Appellant submitted her SNAP Interim Contact Form and indicated no changes to the pre-populated \$1,330.40 gross earned income amount (Exhibit D-9).
- 24) On September 6, 2023, Respondent Worker [REDACTED] recorded “no change to income” and “snap approved 861.00 monthly” (Exhibit D-11).
- 25) On September 7, 2023, the Respondent issued a notice advising the AG SNAP benefits would increase from \$802 to \$86, effective October 1, 2023, because

The Standard Deduction amount applied to the SNAP income has changed. The Federal Government has reevaluated the amount of SNAP benefits to be issue based on Assistance Group size and counted income. Your deduction or shelter and/or utility costs [sic] is higher.

- 26) On February 7, 2024, Respondent Supervisor [REDACTED] recorded “found that income had been entered as monthly, not bi-weekly, updated,” “also found that 3/7/23 pay had been used, it should not have been as wasn’t in LBP and also lower pay/hours,” and “counted 2/7/23 pay and 2/22/23 updated and ran, SNAP decreases to \$246 for 3/24 ongoing” (Exhibit D-11).

APPLICABLE POLICY

WVIMM § 11.2 *SNAP Claims and Repayment Procedures* provides that 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.

WVIMM § 11.2.3.A *UPV Claims* provides that there are two types of UPVs — client errors and agency errors. A UPV claim may be established when:

- An error by the [Department] resulted in the over-issuance
- An unintentional error made by the client resulted in the over-issuance ...

A client error UPV is established retroactively for the six years preceding the month of discovery. An agency error is only established retroactively for the one year preceding the date of the discovery.

WVIMM § 11.2.3.A.1 *Agency Errors* provides that for a failure to take prompt action, the first month of over-issuance is the month the change would have been effective had the agency acted promptly. For a computation error, the first month of over-issuance is the month the incorrect allotment was effective.

WVIMM § 4.3.30 *Employment* provides that salaries and wages are counted as earned for SNAP and WV WORKS.

WVIMM § 4.4.1 *Budgeting Method* provides that eligibility is determined and benefits are issued monthly; therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. The following information applies to earned and unearned income.

For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the assistance group (AG). Income is projected; past income is used only when it reflects the income the client reasonably expects to receive during the certification period.

WVIMM § 4.4.1.A *Methods for Reasonably Anticipating Income* provides that past income must be used only when both of the following conditions exist for a source of income:
Income from the source is expected to continue into the certification period.

WVIMM § 4.4.1.B *Consideration of Past Income* provides that income is determined as follows:

Step 1: Determine the amount of income received by all persons in the Income Group (IG) in the 30 calendar days before the application/redetermination date, or interview date when the interview is completed on a different day than when the application is received. The income from this 30-day period is the minimum amount of income that must be considered. When, in the Worker's judgement, future income may be more reasonably anticipated by considering income from a longer period, the Worker considers income for the period he determines to be reasonable. All pay periods during the appropriate period must be considered and must be consecutive.

The year-to-date amounts on check stubs may only be used when the client has verification of all payment amounts whether used or not but is missing one.

Step 2: Determine if the income from the previous 30 days is reasonably expected to continue into the new certification period. If it is not expected to continue, the income from this source is no longer considered for use in the new certification period. If it is expected to continue, determine if the amount is reasonably expected to be more or less the same.

Step 3: Once the Worker has determined the income to be considered and the time period for which they are considered, he must then determine if any source should be considered for future income ...

WVIMM § 4.4.1.D *How to Use Past and Future Income* provides that After the Worker determines all of the income sources that are to be considered for use, the worker determines the amount of monthly income, based on the frequency of receipt and whether the amount is stable or fluctuates as described below.

When the frequency of receipt is semi-monthly, convert the amount per period to a monthly amount: Find the average amount per period and convert to monthly amount.

The purpose of finding an average amount of fluctuating income is to even out the highs and lows in the amount of income. The client is not, then, required to report fluctuating income each pay period, and the Worker is not required to change income monthly ...

To convert a semi-monthly amount (twice/month) to a monthly amount, multiply an actual or average amount by 2.

WVIMM § 4.4.3. B *Determining Countable Income* provides that to determine countable income for cases meeting the eligibility tests above:

Step 1: Combine monthly gross countable earnings and monthly gross profit from self-employment.

Step 2: Deduct 20% of Step 1.

Step 3: Add the gross countable unearned income, including the WV WORKS benefit and any amount reduced or being repaid to WV WORKS due to failure to comply with a program requirement. See Section 4.4.4.

Step 4: Subtract the Standard Deduction found in Appendix B.

Step 5: Subtract allowable Dependent Care Expenses.

Step 6: Subtract the amount of legally obligated child support actually paid.

Step 7: Subtract the Homeless Shelter Standard Deduction found in Appendix B.

Step 8: Subtract allowable medical expenses in excess of \$35.

Step 9: Calculate 50% of the remaining income and compare it to the actual monthly shelter/SUA amount.

Step 10:

Shelter/SUA Equal to Or Less Than Step 9

No further computation is needed. The amount from Step 8 is the countable income.

No further computation is needed. The amount from Step 8 is the countable income.

Shelter/SUA Greater Than Step 9

The amount in excess of 50%, not to exceed the shelter/utility cap, in Appendix B is deducted to arrive at countable income.

The amount in excess of 50% is deducted, without regard to the shelter/utility cap, in Appendix B to arrive at countable income.

Step 11: Compare the countable income to the maximum net income in Appendix A for the AG size. This net income test does not apply to Categorically Eligible AGs. See Chapter 1.

WVIMM § 4.4.3.C *Determining the Amount of the Benefit* provides that to determine the SNAP allotment, find the countable income and the maximum benefit allotment for the AG in Appendix A. One- and two-person AGs who meet the gross and net income test or who are categorically eligible, as defined in Section 1.4.17.C automatically receive the minimum SNAP benefit, unless it is a prorated benefit. See Appendix D, SNAP and WV WORKS Proration Table. No benefits are issued to any AG eligible for an initial, prorated amount less than \$10. See Chapter 1 for proration requirements.

The Worker will determine the benefit amount by using the following method. The eligibility system also uses this method.

Computation of Benefit Amount Example

Multiply net income by 30% (Round up)

$$\begin{array}{r} \$ 554 \text{ Net monthly income} \\ \times .30 \\ \hline \$166.20 = \$167 \end{array}$$

Subtract 30% of net income as calculated above from the maximum monthly benefit for the AG size.

$$\begin{array}{r} \$939 \text{ Maximum allotment for four} \\ - 167 \text{ 30\% of net income} \\ \hline \$772 \text{ SNAP benefit for a full month} \end{array}$$

Code of Federal Regulations 7 CFR § 273.2(f)(6) Documentation provides that case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

Code of Federal Regulations 7 CFR 273.10(c)(1) Determining Income – Anticipating income provides in the relevant sections:

- i. The State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by § 273.12.
- ii. Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the recertification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

Code of Federal Regulations 7 CFR 273.10(c)(3) Income averaging provides in relevant sections:

- i. Income may be averaged in accordance with methods established by the State agency to be applied Statewide for categories of households ... An average must be recalculated at recertification and in response to changes in income, in accordance with § 273.12(c), and the State agency shall inform the household of the amount of income used to calculate the allotment.

Code of Federal Regulations 7 CFR § 273.18(a)(1)(i) explains that a recipient claim is an amount owed because benefits are overpaid.

Code of Federal Regulations 7 CFR § 273.18(b)(1) through (3) provide that there are three types of claims. An Inadvertent Household Error claim is a claim for an overpayment resulting from a misunderstanding or an unintended error on the part of the household. An agency error claim is a claim for an overpayment caused by an action or failure to take action by the State agency.

DISCUSSION

The Respondent argued that the Appellant was overissued SNAP benefits beginning in April 2023 due to agency errors calculating the AG's income and SNAP allotment amounts.

The Respondent bears the burden of proof and had to demonstrate by a preponderance of the evidence that a SNAP repayment claim must be established because the Appellant received more SNAP benefits than the AG was entitled to receive, beginning in April 2023, because of errors made by the agency. The evidence had to further demonstrate that the Respondent's repayment calculations were accurate.

The policy provides that when an AG has been issued more SNAP benefits than it was entitled to receive, corrective action may be taken to recoup the difference between the AG's SNAP entitlement and the SNAP allotment the AG received. Unintentional Program Violations (UPVs) include agency errors that result in SNAP benefit over issuance.

According to the policy, an agency error UPV is only established retroactively for the one year preceding the date of discovery. The evidence revealed that Respondent Supervisor [REDACTED] discovered the agency error on February 7, 2024. The policy instructs that the first month of SNAP over-issuance is the month the change would have been effective had the agency acted promptly on the information.

Agency Error

According to the policy, the Respondent worker must determine a monthly amount of earned income that can be reasonably anticipated for the AG during the certification period. The policy instructs that past income may be used when income from the source is expected to continue into the certification period. To determine the monthly amount of income, the policy requires the worker to consider all income received by the AG in the 30 calendar days before the application/redetermination date, or interview date when the interview is completed on a different day than when the application was received.

The evidence revealed that the Appellant submitted an electronic SNAP renewal form on February 27, 2023, and completed an eligibility interview with Respondent Worker [REDACTED] on March 2, 2023. According to the evidence, the Appellant reported that she received \$1,589.00 twice per

month. The Appellant submitted verification of gross earned income of \$1,596.48 paid on February 7, 2023; \$1,463.44 paid on February 22, 2023; and \$1,197.36 on March 7, 2023. When the AG's future income can more accurately be determined by considering income from a longer period, the agency is permitted to consider income beyond the 30-day period. The case comments indicate the worker used gross income from "both" pays; however, the Respondent's witness testified that the initial worker made an agency error at this juncture when all three submitted pay verifications were considered when calculating the AG's April 1, 2023 SNAP allotment amount.

Although it could not be verified by the submitted evidence whether Respondent Worker [REDACTED] considered the submitted verification for pay beyond the 30-day lookback period, the submitted evidence revealed that the Respondent Worker [REDACTED] made an agency error by considering bi-weekly pay rather than semi-monthly pay to determine the monthly amount of the AG's income and SNAP allotment amount.

The Appellant argued that the household correctly reported receiving semi-monthly income and that the Respondent's income calculations incorrectly reflected bi-weekly income. During the hearing, Ms. Vandegrift affirmed that bi-weekly income calculations were used to determine the corrected amounts of SNAP allotment and the repayment claim. When asked whether the amount of the claim would have been affected if the correct semi-monthly income had been used, Ms. Vandegrift affirmed that the amount of the claim would have been reduced. The Respondent's witness testified that the Respondent, not the AG, made errors calculating the AG's income that resulted in the Respondent's incorrect calculation of the Appellant's SNAP allotment amount, beginning in April 2023.

To determine the amount of the monthly SNAP allotment, the agency must compare the countable income to the maximum benefit allotment for the AG size. Because calculating the AG's monthly SNAP allotment is reliant on a correct determination of the AG's gross monthly income amount, the Respondent Worker [REDACTED] agency error resulted in the AG being issued an incorrect SNAP allotment, beginning on April 1, 2023.

Pursuant to the evidence, on September 6, 2023, Respondent Worker [REDACTED] processed the Appellant's SNAP Interim Contact Form, approved the AG's SNAP eligibility, and increased the AG's allotment amount based on the same income considered during the Respondent's March 2023 SNAP allotment determination. The Respondent was not required to conduct an interview at this stage. Because the September 2023 SNAP allotment calculation was based on an incorrect amount of income, the AG continued to be allotted an incorrect amount of SNAP benefits, beginning on October 1, 2023.

Repayment of SNAP Over Issuance

To establish that the AG must repay overissued SNAP benefits, the preponderance of evidence had to verify that the AG was issued more SNAP benefits than it was entitled to receive beginning in April 2023. The SNAP Claim Determination forms reflected the Appellant's household received \$802 from April through September 2023, and \$861 from October 2023 through February 2024, in monthly SNAP benefits for a four-person household. The Appellant did not dispute the amount of SNAP benefits received during the proposed SNAP over issuance period.

To determine whether SNAP benefit over issuance has occurred, a *de novo* review of the AG's monthly gross income amount follows:

The Appellant submitted earning verification records that reflected gross earned income of \$1,596.48 paid on February 7, 2023; \$1,463.44 paid on February 22, 2023; and \$1,197.36 on March 7, 2023. When the frequency of income is semi-monthly, the policy instructs that an average amount of monthly income must be determined to establish a monthly income amount.

\$1,596.48	February 7 gross pay
<u>+1,463.44</u>	February 22 gross pay
\$3,059.92 ÷ 2 = \$1,529.96	average pay per period

The averaged income per pay period is near to the \$1,589 earned income semi-monthly amount reported by the Appellant. As the \$1,197.36 gross pay for March 7, 2023, was significantly lower than the Appellant's reported pay and no evidence was submitted to establish that income beyond the 30-day lookback period should be considered, the March 7, 2023 pay was not considered by this Hearing Officer. The policy instructs that the averaged semi-monthly pay amount must be multiplied by 2 to convert the AG's income to a monthly amount.

$\$1,529.96 \times 2 = \$3,059.92$ AG's gross monthly income amount

The evidence revealed the AG's \$3,059.92 gross monthly earned income amount was significantly higher than the \$1,330.40 gross monthly earned income considered by the Respondent when calculating the AG's April 1 and October 1, 2023 SNAP allotment amounts.

To calculate the amount of the household's SNAP allotment entitlement, the Respondent must compare the AG's net monthly income to the maximum SNAP allotment entitlement for the household size. The preponderance of evidence revealed the AG received a higher allotment amount than they were entitled to receive because the Respondent considered a lower amount of gross monthly earned income than was received by the AG at the time of the allotment.

The Appellant did not dispute the Respondent's responsibility in causing the SNAP over issuance but argued that repayment should not be owed because the Appellant's household fulfilled their reporting obligations. The evidence revealed the Appellant electronically signed her understanding that repayment of SNAP benefits may be required if unintentional errors made by the agency resulted in the AG receiving more benefits than it was eligible to receive. As the regulations and policy permit the agency to seek recoupment of overissued SNAP benefits caused by an agency error, the Respondent was required to implement a UPV repayment claim against the Appellant.

During the hearing, the Respondent's witness testified that the submitted repayment calculation forms were incorrect because she incorrectly considered bi-weekly rather than semi-monthly earned income when determining the corrected SNAP allotment and SNAP over issuance amounts. As the repayment amount and calculations submitted by the Respondent were unreliable, the amount of the Respondent's repayment claim against the Appellant could not be affirmed.

CONCLUSIONS OF LAW

- 1) An agency error repayment claim may be established when an action or failure to take action by the agency results in the AG receiving a SNAP overpayment.
- 2) The preponderance of evidence revealed that the Respondent made an agency error by incorrectly considering bi-weekly income for the Appellant rather than the AG's reported semi-monthly income.
- 3) Because the Respondent incorrectly calculated the AG's gross monthly income amount as lower than the AG's actual income, the AG received more SNAP benefits than it was entitled to receive beginning in April 2023.
- 4) As the evidence revealed an agency error resulted in the AG receiving more SNAP benefits than it was entitled to receive, the Respondent must implement a SNAP overpayment repayment claim.
- 5) The preponderance of evidence revealed the SNAP over issuance repayment claim amount was incorrectly calculated.
- 6) As the Respondent's SNAP repayment calculations were erroneous, the matter must be remanded for recalculation of repayment owed.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to implement SNAP over issuance repayment claim against the Appellant for SNAP benefits received April 2023 through February 2024. The matter is **REMANDED** for recalculation of the owed repayment amount based upon the proper consideration of the AG's gross monthly income during the SNAP over issuance period.

ENTERED this 3rd day of January 2025.

Tara B. Thompson, MLS
State Hearing Officer