



January 15, 2025

[REDACTED]

RE: [REDACTED] v. WV DoHS/BFA
ACTION NO.: 24-BOR-3594

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,

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

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

cc: Jake Wegman, Assistant Attorney General

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

████████████████████

Appellant,

v.

Action Number: 24-BOR-3594

**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 January 8, 2025.

The matter before the Hearing Officer arises from the Respondent’s September 25, 2024 decision to implement a Supplemental Nutrition Assistance Program (SNAP) repayment claim against the Appellant’s household.

At the hearing, the Respondent was represented by Assistant Attorney General James “Jake” Wegman. Investigations and Fraud Management Repayment Investigator Abigail Vandegrift (hereafter Ms. Vandegrift) appeared as a witness on behalf of the Respondent. The Appellant was represented by her mother, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department’s Exhibits:

- D-1 Benefit Recovery Referral #8000276968, dated April 17, 2024
Hearing Summary
- D-2 West Virginia Income Maintenance Manual (WVIMM) Chapter 1 excerpts
- D-3 WVIMM Chapter 1 excerpts
- D-4 Food Stamp Claim Determination
Food Stamp Allotment Determination Screenprint
- D-5 SNAP Notice, dated April 18, 2024
- D-6 SNAP Notice, dated January 11, 2021
- D-7 Case Screenprint

- D-8 WVIMM Chapter 1 excerpts
- D-9 WVIMM Chapter 1 excerpts
- D-10 WVIMM Chapter 4 excerpts
- D-11 WVIMM Chapter 11 excerpts
- D-12 WVIMM Chapter 22 excerpts
- D-13 Code of Federal Regulations excerpt, § 273.18
- D-14 SNAP CSLE SNAP Review Form, received September 25, 2023
- D-15 SNAP PRC2 Interim Contact Form, received April 4, 2024
- D-16 Case Comments
- D-17 Email Correspondence, dated October 26, 2024
Notices, dated September 25, 2024
Overpayment Calculation Sheet

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 September 25, 2024, the Respondent issued a notice advising the Appellant a \$366 SNAP over issuance repayment claim was being implemented against the Appellant. The reason for the claim was an agency error by "Incorrect Income Disregards/Deductions" (Exhibit D-17).
- 2) The September 25, 2024 notice advised the agency error caused the Appellant to receive more SNAP than she was eligible to receive from November 1, 2023 through April 30, 2024 (Exhibit D-17).

Agency Error

- 3) Beginning June 1, 2011, the Appellant was enrolled in Medicare Part A and Part B (Exhibit D-7).
- 4) The Appellant's Medicare premiums were paid through Medicare Premium assistance benefits.
- 5) In November 2020, the Respondent's record reflected "510-West Virginia" as the payor of the Appellant's \$134 Medicare premium (Exhibit D-7).
- 6) In January 2021, the Respondent's record reflected "Self-Beneficiary" as the payor of the Appellant's \$134 Medicare premium (Exhibit D-7).

- 7) On January 11, 2021, the Respondent notified the Appellant the amount of her monthly SNAP benefit allotment would increase, because of an increase in the Appellant's medical expenses. When determining the amount of the allotment, the Respondent applied a \$99 medical expense deduction (Exhibit D-6).
- 8) On November 16, 2021, Respondent Worker ██████ recorded, "Medicare –self-beneficiary" (Exhibit D-16).
- 9) On September 25, 2023, the Appellant submitted a CSLE *SNAP Review Form* (Exhibit D-14).
- 10) On the *SNAP Review Form*, the Appellant indicated \$39.94 earned income every two weeks (Exhibit D-14) and did not mark any changes to the pre-populated \$1,161 monthly "SS DISABILITY/CHILD" unearned income (Exhibit D-14).
- 11) On September 23, 2023, the Appellant signed *Rights and Responsibilities* acknowledging that she understood that 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-14).
- 12) On March 28, 2024, the Respondent's record reflected "Self-Beneficiary" as the payor of the Appellant's \$170.10 Medicare premium (Exhibit D-7).
- 13) On April 4, 2024, the Appellant submitted her SNAP PRC2 *Interim Contact Form* (Exhibit D-15) and marked that there were no changes to the pre-populated \$87.17 gross monthly earned income or \$1,198 unearned income (Exhibit D-15).
- 14) On April 8, 2024, the Appellant's *Interim Contact Form* was processed (Exhibit D-16).
- 15) On April 17, 2024, Respondent Worker ██████ submitted Benefit Recovery Referral ██████ to West Virginia Office of Inspector General (OIG) Investigations and Fraud Management (IFM). The referral was assigned to Ms. Vandegrift, an IFM Repayment Investigator (Exhibits D-1 and D-16).
- 16) The April 17, 2024 referral alleged: "AFMD was coded as self when WV was paying premium causing overpayment" (Exhibit D-1).

SNAP Allotment

- 17) The Appellant received \$186 in monthly SNAP benefits for a one-person household from November 2023 through February 2024 (Exhibit D-4).
- 18) The \$186 monthly SNAP allotment calculation was based on \$350.46 net SNAP income, determined by an incorrect application of an excess medical deduction (Exhibit D-4).

- 19) The Appellant was entitled to receive \$125 in monthly SNAP allotment for a one-person household from November 2023 through February 2024 (Exhibits D-4, D-6, D-7, and D-14).
- 20) The Appellant received \$169 in monthly SNAP benefits for a one-person household from March through April 2024 (Exhibit D-4).
- 21) The \$169 monthly SNAP allotment calculation was based on \$405.96 net SNAP income determined by an incorrect application of an excess medical deduction (Exhibit D-4).
- 22) The Appellant was entitled to receive \$108 in monthly SNAP benefits for a one-person household from March through April 2024 (Exhibits D-4, D-6, D-7, D-15, and D-16).
- 23) On April 18, 2024, the Respondent issued a notice advising the Appellant her SNAP allotment would decrease from \$169 to \$108, effective May 1, 2024, because her medical expenses were less (Exhibit D-5).
- 24) The \$108 monthly SNAP allotment calculation did not include the application of an excess medical deduction (Exhibit D-5).

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 § 4.3.73 Retirement, Survivors, and Disability Insurance (RSDI) is counted as unearned income for SNAP, WV WORKS, and Medicaid. For SNAP, count the amount of the client's entitlement. This includes any amount deducted for Medicare, if applicable.

WVIMM § 4.3.82 Social Security Payments are counted as unearned income for SNAP, WV WORKS, and Medicaid (See RSDI).

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 § 4.4.2.B.6 Medical Expenses provides that medical expenses exceeding \$35 must be allowed as a medical deduction for AG members who are elderly or disabled. Allowable deductible expenses are medical costs that are not reimbursable through a third party (insurance, Medicaid, etc.)

Medicare premiums are a permitted deduction, except when the DoHS is paying the premium.

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)

\$ 554 Net monthly income
X .30
\$166.20 = \$167

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

\$939 Maximum allotment for four
- 167 30% of net income
\$772 SNAP benefit for a full month

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(d) *Determining deductions* provides that deductible expenses include only certain dependent care, shelter, medical, and, at State agency option, child support costs as described in § 273.9.

(1) *Disallowed expenses.*

- (i) ... An expense which is covered by an excluded vendor payment that has been converted to a direct cash payment under the approval of a federally authorized demonstration project as specified under § 273.9(c)(1) shall not be deductible. However, that portion of an allowable medical expense which is not reimbursable shall be included as part of the household's medical expenses.

Code of Federal Regulations 7 CFR § 273.9(c) *Income Exclusions* provides that only the listed items may be excluded from household income:

- (1) Any gain or benefit which is not in the form of money payable directly to the household, including in-kind benefits and certain vendor payments. In-kind benefits are those for

which no monetary payment is made on behalf of the household and include meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. Payments made to a third party on behalf of the household are included or excluded as income as follows:

- (i) *Public assistance (PA) vendor payments:* PA vendor payments are counted as income unless they are made for:
 - (A) Medical assistance; ...

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 implemented a SNAP over issuance repayment claim against the Appellant because an agency error resulted in the Appellant receiving more SNAP benefits than she was eligible to receive from November 2023 through April 2024. The Appellant's representative did not dispute the agency error, SNAP over issuance, or SNAP repayment amount. The Appellant's representative argued that repayment would cause the Appellant financial hardship. The Appellant's representative requested a fair hearing to obtain a finding that the SNAP overpayment was caused by an agency error, not due to fraud by the Appellant. The Appellant's representative requested that the Appellant not be required to repay the SNAP over issuance.

The Respondent bears the burden of proof and had to demonstrate by a preponderance of evidence that a SNAP repayment claim must be established because an agency error caused the Appellant to receive more SNAP benefits than she was entitled to receive from November 2023 through April 2024. 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 received by the AG during the over issuance period. 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 the Respondent discovered the agency error on April 17, 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 correct information.

Agency Error

The Respondent argued that the Appellant received more SNAP than she was eligible to receive because the Respondent incorrectly applied a medical-expense income deduction when calculating the Appellant's SNAP allotment. Calculating the AG's monthly SNAP allotment is reliant on a correct determination of the AG's countable income after the application of income deductions. To determine the amount of countable income, the Respondent must subtract eligible income deductions from the AG's gross monthly income.

The Respondent's witness testified that the Appellant's Medicare premiums were paid through the Medicaid Medicare premium assistance program. The Appellant's representative did not dispute that the Appellant's Medicare premiums were paid through Medicaid. Pursuant to the regulations, Public Assistance (PA) vendor payments for medical assistance are not counted as income. While the Appellant was not required to claim her Medicare premium assistance as income, she was also not eligible to claim her Medicare premium costs as an income deduction. On the *SNAP Review Form*, the Appellant did not indicate any eligible excess medical expenses. The submitted evidence did not reveal that the Appellant qualified for other medical expense deductions when determining her SNAP allotment amount.

The agency has a responsibility to ensure proper documentation in the Appellant's record. The evidence revealed the Respondent incorrectly documented that the Appellant was self-paying her Medicare premium and applied a medical expense deduction to the Appellant's income when determining her SNAP allotment amount. Pursuant to the evidence, the Respondent made an agency error when calculating the Appellant's SNAP allotment in January and November 2021. Because a medical expense deduction was incorrectly applied to the Appellant's income when determining the SNAP allotment amount, the agency's error resulted in the Appellant receiving more SNAP benefits than she was entitled to receive.

The regulations only permit repayment claims to be established for the one-year period preceding the date of discovery of the agency error. According to the evidence, the Respondent's supervisor discovered the agency error on April 17, 2024; therefore, a repayment claim may not be established for SNAP benefits overissued to the Appellant in 2021.

The evidence demonstrated that the Appellant completed a *SNAP Review Form* in September 2023. Pursuant to the evidence, the Respondent continued to apply the erroneous medical expense deduction when calculating the AG's SNAP allotment for November 2023, resulting in the Appellant receiving a SNAP benefit over issuance. According to the Respondent's submitted record, on March 28, 2024, the Appellant's case continued to incorrectly reflect that the Appellant was self-paying her Medicare premium when her premiums were being paid by Medicaid.

When the Appellant's April 2024 *SNAP Interim Contact Form* was processed, the Respondent identified the agency's error and took corrective action to reduce the Appellant's SNAP benefits and implement a SNAP over issuance repayment claim. The Appellant did not contest the April 2024 SNAP reduction.

Repayment Claim

According to the policy, the Respondent must determine a monthly amount of income that can reasonably be anticipated for the AG during the certification period. The worker applies eligible deductions to the AG's income to determine the amount of the Appellant's countable income. Pursuant to the policy, the net monthly income after applied deductions is used to determine the amount of the AG's monthly SNAP allotment. The preponderance of evidence revealed that the Respondent incorrectly deducted medical expenses from the Appellant's income, which resulted in the Appellant receiving a higher allotment amount than she was entitled to receive.

When a household receives more SNAP benefits than they are entitled to receive due to an agency error, a repayment claim may be established. 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 November 2023.

During the hearing, the Respondent's witness explained the SNAP allotment and repayment calculations. The Appellant's representative did not dispute the amount of income or deductions applied when calculating the Appellant's countable income, SNAP allotment, and repayment amounts. The Appellant's representative did not dispute the Respondent's responsibility in causing the SNAP over issuance but argued that repayment should not be owed because repayment will cause the Appellant financial hardship. The evidence revealed that the Appellant signed her understanding that repayment of SNAP benefits may be required if unintentional errors made by the agency resulted in the Appellant receiving more benefits than she was eligible to receive. As the regulations and policy permit the agency to seek recoupment of overissued SNAP benefits caused by unintentional agency errors, the Respondent was required to implement a UPV repayment claim against the Appellant.

According to the evidence, the Appellant received \$186 in monthly SNAP benefits from November 2023 through February 2024 and \$169 in monthly SNAP benefits from March through April 2024 for a one-person household. The preponderance of evidence revealed that the Appellant was entitled to receive \$125 in monthly SNAP benefits from November 2023 through February 2024 and \$108 in monthly SNAP benefits from March through April 2024.

The recoupment amount is the difference between the amount of SNAP benefits received and the amount of SNAP benefits the Appellant was entitled to receive:

\$186	Monthly SNAP benefits received by the Appellant
<u>-125</u>	Monthly SNAP benefits the Appellant was entitled to receive
\$ 61	Monthly Over-issued SNAP benefits

The process must be repeated to determine the amount of SNAP over-issuance from March through April 2024.

\$169	Monthly SNAP benefits received by the Appellant
<u>-108</u>	Monthly SNAP benefits the Appellant was entitled to receive
\$ 61	Monthly Over-issued SNAP benefits

To determine the total amount of overissued SNAP benefits for November 2023 through April 2024, the monthly overissued SNAP benefits for each month must be combined:

\$61 x 6 months = \$366 over-issued SNAP benefits from November 2023 through April 2024

Because the preponderance of evidence verified the Appellant received more SNAP benefits than she was entitled to receive, the Respondent correctly implemented a SNAP repayment claim against the Appellant to recoup the \$366 of overissued SNAP benefits allotted to the Appellant from November 2023 through April 2024.

CONCLUSIONS OF LAW

- 1) An agency error SNAP 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 deducting the Appellant's Medicare premium costs from the Appellant's income when determining her SNAP allotment amount from November 2023 through April 2024.
- 3) Because the Respondent incorrectly applied a medical expense deduction to the Appellant's income, the Appellant received \$366 more SNAP benefits than she was entitled to receive from November 2023 through April 2024.
- 4) As the evidence revealed an agency error resulted in the Appellant receiving \$366 more SNAP benefits than it was entitled to receive, the Respondent must implement a SNAP overpayment repayment claim.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to implement a SNAP over issuance repayment claim against the Appellant for overissued benefits received November 2023 through April 2024.

ENTERED this 15th day of January 2025.

Tara B. Thompson, MLS
State Hearing Officer