

**BEFORE THE BOARD OF PUBLIC ASSISTANCE  
OF THE STATE OF MONTANA**

In the matter of the Fair Hearing                    )  
of Claimant    )     **FAIR HEARING  
DECISIONS No. 06-045**

After notice and in person hearing regarding the repayment of overissued Food Stamp benefits and closure of Food Stamp benefits to Claimant by Lewis and Clark County Office of Public Assistance, the Hearing Officer considered the evidence submitted at the Fair Hearing held on September 27, 2005 in the offices of the Lewis and Clark County Office of Public Assistance, Helena, Montana, Helena, Montana. From this record, the Hearing Officer now makes the following disposition of the contested cases.

**REPRESENTATION**

Claimant (hereinafter Claimant) represented herself. Dave Morey, County Director and Melinda Cummings, Supervisor, represented Lewis and Clark County Office of Public Assistance (hereinafter Lewis and Clark County).

**IDENTIFYING INFORMATION**

Lewis and Clark County closed Food Stamp benefits for Claimant and further found that Lewis and Clark County had provided an overpayment of Food Stamps to Claimant because trust property was determined to be a countable resource to Claimant's household which exceeded the allowable resource limit. It is Claimant's position that she only applied for Food Stamp benefits because she was encouraged to do so by her case worker, she reported the trust properly and the income she received from the trust earnings. She should not now be

required to repay those Food Stamp benefits she received due to a Lewis and Clark County error.

### **EVIDENTIARY RULING**

There were no objections to the evidence presented. County Exhibits #1 through #5 were admitted into the record.

### **FINDINGS OF FACT**

1. Claimant applied for Food Stamp benefits in September 2002. At the time she applied, Claimant disclosed the existence of a Trust Agreement with herself as beneficiary. Her case worker at Lewis and Clark County determined that the trust fund was not accessible for Food Stamp purposes and authorized Food Stamp benefits effective September 2002. Claimant reported all income earned and distributed to her by the trust in a timely manner, and Food Stamp benefits were issued based upon the income earned.

2. On June 1, 2004, Lewis and Clark County determined that Claimant's trust account was accessible for Food Stamp purposes and Claimant's Food Stamp case was closed effective June 30, 2004.

3. Lewis and Clark County received a determination from Barbara Hoffman, Department of Public Health and Human Services Attorney that, in her opinion, the trust fund in this case was an accessible resource for Food Stamp purposes and exceeded the \$3000 resource limit for Food Stamp eligibility. On June 1, 2005, Lewis and Clark County notified Claimant that because the trust account was determined to be accessible, she was over resources for the entire period of September 2002 through June 2004. As a result, Claimant's household

received \$9,681 more Food Stamp benefits than it was eligible for and an overpayment notice was issued on June 15, 2005.

4. The Named Trust Agreement was established on December 20, 1993. Claimant is the only beneficiary of this trust. Trustee is the trustee of this trust. Trustee is not a court appointed trustee nor are there any court ordered restrictions on this trust. Section B, Third part, subpart (A), on page 5 provides that; "During the term of the trust, the trustee shall pay to the beneficiary (Claimant) at least as often as quarter-annually the net income of the trust. Also, the trustee shall pay to the beneficiary, or for the beneficiary's benefit, so much of the trust principal as the trustee may from time to time determined to be required for the beneficiary's support, education and health."

On March 8, 2004, Trustee provided a letter to the Department stating that Claimant will not receive any funds from the trust until she is 30 and then is only entitled to a percentage of the trust. Claimant has not received any benefits from the principal amount of the trust since it was established. The trust balance as of March 8, 2004 is \$47,112.24.

5. This entire overpayment was due to an administrative error on the part of Lewis and Clark County and due to no fault of Claimant. Claimant testified that when she applied, her intention was to apply for CHIP assistance for her children and her case manager encouraged her to apply for Food Stamp benefits.

#### **CONCLUSIONS OF LAW**

1. Pursuant to ARM 37.78.1001, the Food Stamp Program shall be governed by the regulations of the Food and Consumer Service of the United States Department of Agriculture contained in the following parts except as the rules in Chapter 78 of Title 37 of the Administrative Rules of Montana make specific provisions which are contrary to the Federal Food Stamp regulations in which case these rules shall take precedence over the Federal Regulations: 7 CFR, Parts 271 through 275. The Department has adopted and incorporated by reference 7 CFR 271 through 275.

2. In determining the resources of a household, only those listed in 7 CFR 273.8(e) shall be excluded. Pursuant to 7 CFR 273.8(e)(8), resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold, shall be excluded as a resource in determining Food Stamp benefits. Any funds in a trust and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:

(I) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(ii) The trustee administering the funds is either:

(A) a court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or  
(B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;

- (B) (iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and
- (iv) The funds held in irrevocable trust are either:
  - (A) Established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or
  - (B) established from nonhousehold funds by a nonhousehold member.

The Named. trust meets the criteria of 7 CFR 273.8(e)(8)(i),(e)(8)(iii) and (e)(8)(iv). The criteria set out in 7 CFR 273.8(e)(8)(ii) is not met. The trustee is Trustee who is an individual rather than a court or an institution, corporation or organization and Trustee. was not appointed by the court and there are no court imposed limitations on her use of the trust funds. It is Lewis and Clark County's position and that of the Department of Public Health and Human Services that all four criteria must be met for the trust funds to be considered inaccessible and, thus, an excluded resource for Food Stamp purposes. Further, according to the USDA, FNS, Food Stamp Program Specialist, a trust must meet all four criteria listed in 7 CFR 273.8(e)(8)(i) through (iv) in order to be excluded from resources. In conclusion the Named trust is considered accessible and cannot be excluded as a resource in determining Food Stamp benefits. Because the trust must be considered a resource, Claimant's resources are over the \$3,000 eligibility limit and she is not eligible for Food Stamp benefits.

3. 7 CFR 273.18(a)(2) provides that a claim against a household is a Federal debt and that the State agency must establish and collect any claim by following the prescribed regulations. 7 CFR 273.18(b)(3) specifically includes as collectible any claims caused by an agency error stemming from action or failure

to take action, with the only exception being overpayments caused by a household transacting an untampered expired ATP card.

4. There is no dispute that this overpayment was caused by administrative error. The dispute regards recovery by Lewis and Clark County of the overpayment. Claimant argues that she should not be obligated to repay this overpayment because it was not caused by her nor can she now afford to repay it. First, 7 CFR 273.18(a)(4) provides that each person who was an adult member of the household when the overpayment occurred is responsible for paying the claim. Second, as above stated, claims caused by an agency error are collectible. State agencies must begin collection action on all claims unless conditions under paragraph (g)(2) of 7 CFR 273.18 apply. 7 CFR 273.18(e)(1). 7 CFR 273.18(g)(2) applied only to benefits from EBT accounts and is not applicable in this case. Treatment of agency caused overpayments as to recovery changed with PRWORA. Effective August 22, 1996, PRWORA was passed by Congress. See Section 844(a)(1) amending (b)(4) of P. L. 104-193. PRWORA unambiguously provides that a State agency shall collect any over-issuance of coupons issued to a household by reducing the allotment of the household or such other means as determined by the Department. One of the amendments made through P. L. 104-193 replaces existing over-issuances collection rules with provisions requiring States to collect any over-issuance by reducing benefits, withholding Unemployment Compensation, recovering from federal pay or income tax refunds or any other means. There are no exceptions for fault or any other reason. Specifically deleted was the special treatment of

collection of overpayment caused by agency error. Section 844(a)(2) amending (d)(A). Lewis and Clark County must collect over-issuances regardless of whether such was caused by agency error or recipient error. As such, Claimant is responsible for the repayment of over-issued Food Stamp benefits. Lewis and Clark County is responsible for initiating collection action on this administrative error claim. Now, unfortunately, it is Claimant who must sit with a debt and determine how she will repay such debt. This places a financial hardship on Claimant. It is most understandable why Claimant finds the repayment request unfair. This Hearing Officer agrees to the inequity of this Federal regulation. However, Claimant provided no argument for an alternative interpretation of the regulations. This Hearing Officer has no authority to grant an exception and waive the claim in this case. Any request for compromise due to inability to pay would be directed to the Department's Quality Assurance Division, Program Compliance, Fraud and Recovery Unit.

### **ORDER**

As set out in the foregoing Findings of Fact and Conclusions of Law, Lewis and Clark County is found proper in the closure of Food Stamp benefits to Claimant effective June 30, 2004. Lewis and Clark County is also found proper, therefore, in seeking repayment of \$9,681 as a result of the overpayment of Food Stamp benefits for the months of September 2002 through June 2004 to Claimant. The trust property is considered a countable resource for purposes of determining Food Stamp eligibility. The appeal of Claimant is hereby denied and Lewis and Clark County Office of Public Assistance upheld.

**NOTICE:** If a party disagrees with this Decision, a request for board review may be made by filing notice of appeal to the Board of Public Assistance, P.O. Box 202953, Helena, Montana 59620. The notice of appeal must be received within fifteen days of the mailing of this decision.

**DATED:** \_\_\_\_\_ November, 2005.

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Harlan Rudolf  
Hearing Officer

### **CERTIFICATION OF MAILING**

I certify that I have mailed a true and correct copy of the above FAIR HEARING DECISION by depositing same in the U.S. Mail postage prepaid on this \_\_\_\_\_ day of November, 2005 at Helena, Montana as follows:

Claimant  
Address  
City, ST Zip

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Bonnie L. Brown  
Administrative Assistant

c: Dave Morey, Lewis and Clark OPA  
Melody Olson, Program Compliance  
Russ Hill