



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Earl Ray Tomblin  
Governor

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

August 5, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 2, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your SNAP benefits due to counting the full monthly amount of your son's SSI income.

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 Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility and benefit levels for SNAP benefits are based on current policy and regulations. Some of these regulations state that eligibility for SNAP benefits, and the amount of the SNAP allotment, are based on the determination of countable household income (that income remaining after all allowable disregards and deductions are applied) and the number of individuals in the SNAP Assistance Group (AG). The income group includes all AG members and all individuals who live with the AG and would otherwise be included in the AG if not ineligible, disqualified or excluded by law. (West Virginia Income Maintenance Manual, Chapter 10.4 and 7 CFR §273.9 and 7 CFR §273.10 - Code of Federal Regulations)

Information submitted at your hearing reveals that the full amount of Social Security benefits received by your son, a SNAP Assistance Group member, must be counted when determining the SNAP benefit amount.

It is the decision of the State Hearing Officer to **uphold** the determination of the Department that the Claimant's AG does not qualify for a SNAP income deduction due to her child's SSI being distributed evenly between her and the child's father.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Donald Calloway, ESS, WVDHHR  
-----, Paralegal, Legal Aid of WV

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

-----,

**CLAIMANT,**

v.

**Action Number: 11-BOR-1291**

**West Virginia Department of  
Health and Human Resources (WVDHHR),**

**RESPONDENT.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair for ----- . This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on August 2, 2011 on a timely appeal filed May 27, 2011.

**II. PROGRAM PURPOSE:**

The purpose of SNAP is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture

**III. PARTICIPANTS:**

-----, Claimant

-----, Paralegal, Legal Aid of WV, Claimant Representative

Donald Calloway, Economic Services Supervisor, WVDHHR

-----, Economic Services Worker (ESW), WVDHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its proposal to reduce the Claimant's SNAP benefits.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual, Chapter 9.1 and Chapter 10.4  
7 CFR § 273.9 & 7 CFR § 273.10 - Code of Federal Regulations

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- Exhibit A – Fax transmittal dated 5/12/2011 from -----, Legal Aid of WV that includes a Final Oder in the ----- divorce matter
- Exhibit B - Notice of Decision dated 5/20/11
- Exhibit C - Fair Hearing Request received by the Department on May 27, 2011
- Exhibit D - Correspondence sent to Claimant from ----- dated 6/1/11
- Exhibit E - Case Comments (3 pages) from 5/19/11 to 7/29/11
- Exhibit F - WVIMM Chapter 9.1.B
- Exhibit G - Verification of -----SSI gross payment amount and payee status

**Claimant's Exhibits:**

- C-1 WVIMM Chapter 9.1.B (duplicate)
- C-2 Family Court of [REDACTED] County, WV Findings of Fact, Conclusions of Law and Final Order Civil Action No. [REDACTED] Entered December 3, 2010 (duplicate)
- C-3 Correspondence from ----- to ----- dated May 12, 2011 (duplicate)
- C-4 WVIMM Chapter 10.4.B (Income Disregards and Deductions)
- C-5 WVIMM Chapter 10.4.B.4 (Child Support Deduction)

**VII. FINDINGS OF FACT:**

- 1) The Claimant's appeal (Exhibit C) was filed following several discussions with -----, an Economic Services Worker (ESW) employed with the Department of Health and Human Resources, hereinafter Department, wherein the Claimant's countable monthly income for Supplemental Nutrition Assistance Program (SNAP) benefits has been in dispute (Exhibits A and E). -----initially approved the Claimant's request for an income deduction that resulted in an increase in SNAP benefits (See Exhibit B), but upon consult with her superior, -----was advised that the income deduction had to be removed. While the Claimant was made aware of the Department's intention to count the full amount of her son's SSI income and reduce her SNAP benefits, there was neither an adverse action taken by the Department, nor written notification of adverse action provided to the Claimant due to her May 27, 2011 written appeal.

- 2) According to information provided by the Claimant, she has been disputing the amount of her SNAP benefits since her divorce in December 2010. Since the Claimant's appeal was not filed until May 27, 2011, the circumstances prior to this appeal cannot be reviewed. This decision will focus solely on the issue that prompted the May 27, 2011 appeal – The calculation of the Assistance Group's (AG) monthly SNAP income.
- 3) The Claimant and her former spouse entered into a shared parenting agreement wherein both parents reportedly have physical custody of their child (-----) evenly. It should be noted, however, that a copy of the shared parenting plan was not provided by either party. Pursuant to the Claimant's final divorce order - Exhibit A (duplicate Exhibit C-2), page 5, states in pertinent part - "The parties shall evenly divide the child's Social Security Income check effective December 1, 2010."
- 4) The Department submitted Exhibit G (Verification of ----- \$674 monthly SSI payment) and information indicating that the payee is ----- [-----] -----, the child's grandmother. Testimony received at the hearing reveals that. ----- receives the SSI check and provides half of the money (\$337) to the Claimant and the other half (\$337) to the child's father.
- 5) The Department noted that pursuant to SNAP policy, either parent can elect to include the child in their SNAP AG, but that all of the child's SSI income must be counted when determining the SNAP benefit amount. The Department contends there is no policy to support an income deduction in this circumstance and 100% of the child's SSI income is intended benefit the child. Pursuant to SNAP policy that defines "the income group," all of his income must count for SNAP eligibility. As a result, the Department contends that the Claimant's monthly SNAP benefit amount should be \$229 (as opposed to \$367 if the income deduction is given).
- 6) The Claimant contends that she should be given an income deduction because the amount removed from her son's SSI check (\$337), and paid to the child's father, is "like child support." The Claimant contends that SNAP policy found in Chapter 10.4 of the West Virginia Income Maintenance Manual allows for a monthly income deduction in the amount of child support paid.
- 7) West Virginia Income Maintenance Manual, Chapter 9.1.A.1.b.2, provides that children under the age of 22, living with a parent, must be in the same AG as that parent. In the instance of shared custody, when the child is legally considered to reside with each parent equal amounts of time (50/50), the parents must decide where the child "lives". If no one is receiving any benefits from the Department for the child, it is assumed that the living arrangements are not questionable and the child is added to the AG that wishes to add him. If the child is already listed in another AG or the other parent wishes to add the child to his AG, the parents must agree as to where the child "lives" and, ultimately, to which AG he is added. Where the child receives the majority of his meals is not relevant.

- 8) West Virginia Income Maintenance Manual, Chapter 9.1.B, states that “the income group” includes all AG members and all individuals who live with the AG and would otherwise be included in the AG if not ineligible, disqualified or excluded by law. This includes ineligible ABAWDs, ineligible aliens, those excluded by law, disqualified due to an IPV or trafficking SNAP for a controlled substance and those who fail to meet the enumeration requirement. See Section 10.4 to determine how to count the income and deductions.
- 9) West Virginia Income Maintenance Manual, Chapter 10.4, contains policy regarding income disregards and deductions, and explains the computations used to determine eligibility for SNAP benefits. Once eligibility is established, the SNAP benefit amount is determined by the countable monthly income (the amount of income that remains after all exclusions, disregards and deductions have been applied) and the number of individuals in the assistance group (AG).
- 10) West Virginia Income Maintenance Manual, Chapter 10.4.B.4 provides that a deduction is allowed for legally obligated child support actually paid by an AG member or disqualified individual to an individual not residing in the same household. In West Virginia, legally obligated means the child support is the result of a circuit or magistrate court order, an order issued by administrative process, or a legally enforceable separation agreement. For orders issued in other states, any order that would be upheld by a Judge in a court of law is considered legally obligated.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Pursuant to existing policy, the Claimant has a shared custody arrangement with the child’s father and she has elected to include her child in her SNAP AG.
- 2) Policy states that “the income group” includes all AG members and all individuals who live with the AG and would otherwise be included in the AG if not ineligible, disqualified or excluded by law. As a result, the Claimant’s child is part of “the income group.”
- 3) The income received by the child, although paid to his payee and distributed evenly to his parents, does not qualify as child support – This money has not been adjudicated as child support and it is not a legally binding payment made by the Claimant - it is the child’s income. As a result, a child support income deduction does not apply.
- 4) In the absence of any known SNAP regulations to support a SNAP income deduction in the Claimant’s case, the Department has correctly calculated the Claimant monthly SNAP income to include the full amount of the child’s (-----) SSI income.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the determination of the Department that the Claimant does not qualify for an income deduction due to her child’s SSI being distributed evenly between her and the child father.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_ Day of August, 2011.**

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**Thomas E. Arnett  
State Hearing Officer**