



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

July 12, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 5, 2011, and concluded on July 12, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to count your six hundred dollar (\$600.00) adoption assistance payment as unearned income for SNAP, and to afford you with a standard utility allowance deduction in the amount of four hundred dollars (\$400.00), rather than a deduction equal to your actual utility expense costs.

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 adoption assistance payments are considered unearned income when computing financial eligibility for SNAP benefits. (West Virginia Income Maintenance Manual §10.3) Also, utility deductions for households having both heating and cooling costs are provided by allotting the household a set Standard Utility Allowance (SUA) deduction amount, the largest of which is in the amount of four hundred dollars (\$400.00). (West Virginia Income Maintenance Manual §10.4, B, 7, and Chapter 10, Appendix B)

The information submitted at your hearing reveals that the income you receive for your adopted child in the amount of six hundred dollars (\$600.00) is counted as unearned income for SNAP financial eligibility purposes. Additionally, your household is eligible for a SUA deduction in the amount four hundred dollars (\$400.00). There is no allowance provided by policy for you to have your actual utility costs counted when determining your utility deduction amounts for SNAP.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in counting your adoption assistance payment in the amount of six hundred dollars (\$600.00) as unearned income when determining your financial eligibility for SNAP. The Department is also **upheld** in the decision to provide you with a SUA deduction of four hundred dollars (\$400.00) rather than counting your actual utility costs as a deduction.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review /Tera Pendleton, [REDACTED] DHHR

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1305

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing 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 July 7, 2011.

It should be noted that the Claimant's SNAP benefits have been continued pending the outcome of this hearing.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (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 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
Tera Pendleton, Department representative

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The questions to be decided are whether the Department was correct in its proposal to count the Claimant's six hundred dollars (\$600.00) in monthly income for her child as unearned income when determining SNAP financial eligibility, and whether the Department was correct in its proposal to afford the Claimant with a utility deduction in the amount of four hundred dollars (\$400.00), rather than counting her actual utility expenses as a deduction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual §10.3, 10.4, B, 7, and Chapter 10, Appendix B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copies of various computer printout screens from Department's computer system
- D-2 Copy of email correspondence between Department workers dated February 18, 2011
- D-3 Notice of decision dated June 8, 2011
- D-4 Copy of [SNAP] determination screen from Department's computer system
- D-5 West Virginia Income Maintenance Manual Section 10.3.B

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving SNAP benefits when the Department determined during a review of financial eligibility that certain income received by her household was required to be counted in determining SNAP income eligibility. This income, totaling six hundred dollars (\$600.00) and called "Adoption Assistance" by the Department, was not previously considered in determining the Claimant's financial eligibility for SNAP. The Department sent the Claimant a notice (D-3) dated June 8, 2011 which includes the following pertinent information:

ACTION: Your SNAP will decrease from \$192.00 to \$34.00 effective 07/01/11.

REASON: Your income has increased. \$600.00

- 2) The parties stipulated that the Claimant's monthly household income as determined by the Department (D-1) is correct, and that the total amount of income coming into the household monthly is two thousand six hundred forty-two dollars (\$2642.00). The parties disagree as to whether six hundred dollars (\$600.00) of that income, which is income received by the Claimant on behalf of her child, should be counted as unearned income when determining the household's financial eligibility for SNAP.
- 3) The Department contends that the six hundred dollars (\$600.00) in monthly income is an Adoption Assistance payment, and that the income is required by policy to be considered as unearned income when determining the Claimant's financial eligibility.
- 4) The Claimant contends that the income is a reimbursement subsidy and that it is not to be counted as unearned income against the household. The Claimant testified that the child has special needs, which increase the family's electricity and water usage and that this increase inflates the monthly usage bills for those respective utilities. She added that she was told by the adoption worker prior to adoption that this money was a reimbursement subsidy, and that although usually adoption payments are considered as income in determining SNAP financial eligibility, this particular payment was not because of the special circumstances involved.
- 5) The Claimant further contends that because her electricity and water bills are so inflated monthly, the Department should not impose its standard utility allowance amount of four hundred dollars (\$400.00) on her household. She testified that her electric bill alone exceeds this amount, and that she should be allowed to have her actual monthly utility costs counted when determining her financial eligibility for SNAP.
- 6) The Department contends that policy provides that all households must be assigned a Standard Utility Allowance (SUA) amount for a deduction based on certain criteria, and that policy does not allow a family to be assessed based on actual monthly utility costs. The Department contends that based on the fact that the Claimant has both heating and cooling costs, she was assessed a SUA deduction in the amount of four hundred dollars (\$400.00), which is the highest amount available for a household to receive.
- 7) The Department submitted evidence (D-2) in the form of an email message from the adoption worker involved with the Claimant's adoption of the child for which she receives the adoption assistance. This evidence shows that the adoption worker clarified in the email that the payments received by the Claimant are a reimbursement for the child's care and are received the month after the care is rendered. There was no indication in the email to suggest that the income in question should not be considered in determining financial eligibility for SNAP.
- 8) The Claimant submitted evidence (C-1) which shows that on October 28, 2008 she entered into an adoption placement agreement with the Department. In the agreement, the Claimant agrees to provide for all of the child's basic needs which include food, clothing, shelter, medical, educational, etc., and that she agreed to keep all medical appointments. Further, the Claimant agreed to assume financial responsibility for the care of the child, including medical care unless otherwise agreed upon during placement. This document shows that the Claimant "may

request an application for adoption assistance be filed on behalf of the child.” By signing the document, the Claimant stated her understanding that “a written subsidy agreement must be entered into with the Department prior to the finalization of the adoption.” This document appears to have been entered into prior to any agreement between the parties for adoption assistance payments, and as such adds nothing in support of the Claimant’s position that the income is not countable in determining SNAP financial eligibility.

- 9) Also included in the Claimant’s evidence (C-1) is a Final Order of Adoption from the Circuit Court of ██████████ County, West Virginia, dated February 10, 2009 in which the Claimant is granted an adoption of the child by the court. This document provides a relevant statement that reads as follows:

Petitioners [Claimant and her husband] have satisfied the necessary elements of West Virginia Code §49-2-17 so as to justify a subsidized adoption. DHHR [Department of Health and Human Resources] tendered to the court an executed and approved Adoption Agreement and the court finds the provision of an adoption subsidy is appropriate under the terms of the cited statutory section.

There is no information provided in the Final Order of Adoption to show the specifics as to the Adoption Agreement referred to in the order, and whether or not the Adoption Agreement holds any information that speaks to whether the adoption subsidy is to be considered unearned income when determining SNAP financial eligibility.

- 10) Also included in the Claimant’s evidence (C-1) is a copy of a page purported by the Claimant during the hearing to have come from the “workbook” provided to her during the adoption process and is numbered “page 2 of 25” at the bottom of the page. This document appears to contain explanations of certain terms, and has an entry titled “Adoption subsidies” which contains the following relevant statement:

Federal or State adoption benefits (also known as **adoption assistance**) designed to help offset the short and long-term costs associated with adopting children who need special services.

- 11) Also included in the Claimant’s evidence (C-1) is several letters authored by an attorney who represented the Claimant during the adoption proceedings. These letters show that the attorney referred to the adoption payments as “adoption subsidies” when corresponding with the Department regarding the matter. The attorney also refers to the need for a “subsidy agreement,” although no copy of such an agreement was provided as evidence for the purposes of this hearing.

- 12) The West Virginia Department of Health and Human Resources Income Maintenance Manual §10.4, B, 7, provides that after all other exclusions, disregards and deductions have been applied, fifty percent (50%) of the remaining income is compared to the total monthly shelter costs and the appropriate Standard Utility Allowance (SUA). If the shelter costs/SUA exceeds 50% of the remaining income, the amount in excess of 50% is deducted. Although actual utility costs are not used, these amounts must be entered into RAPIDS [Department’s computer

system] in order to determine eligibility for the appropriate SUA. Because the Claimant has both heating and cooling costs, she was afforded the highest SUA amount, which is four hundred dollars (\$400.00). (West Virginia Department of Health and Human Resources Income Maintenance Manual Chapter 10, Appendix B) There is no policy found that allows an individual to opt to have their actual utility expenses considered rather than an SUA amount.

- 13) The West Virginia Department of Health and Human Resources Income Maintenance Manual §10.3 provides that adoption assistance payments are considered unearned income for SNAP financial eligibility purposes.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that adoption assistance payments are considered unearned income when determining financial eligibility for SNAP benefits.
- 2) Policy also provides that SNAP benefits are calculated by beginning with the total gross income, and subtracting certain deductions and disregards to arrive at a final net monthly countable income. Individuals are afforded a deduction for utility expenses, and this deduction is determined based on the individual's circumstances. When a household shows that it has both heating and cooling expenses, the household is eligible for a utility deduction, called an SUA deduction, in the amount of four hundred dollars (\$400.00). An individual's actual utility expenses are used only to determine which SUA deduction they are entitled to receive. Policy does not provide for individuals to be afforded a utility deduction in an amount equal to that individual's actual monthly utility expenses.
- 3) The totality of the evidence supports that the six hundred dollar (\$600.00) monthly payment received by the Claimant for her child is an adoption assistance payment, and as such, this payment is considered as unearned income for SNAP purposes. Evidence provided by the Claimant (C-1) in the form of a page from a "workbook" she is purported to have received during the adoption process supports that "adoption subsidies" and "adoption assistance" are the same benefits, and not different benefits subject to different policies when determining whether the income is counted for SNAP as purported by the Claimant. There is insufficient evidence to support that the payment in question is somehow exempted from the policy which requires adoption assistance to be counted as unearned income.
- 4) The evidence supports that the Claimant was entitled to a SUA deduction in the amount of four hundred dollars (\$400.00) based on her reported utility expenses which include both a heating and cooling expense. Although the Claimant's purported utility expenses far exceed the SUA deduction amount afforded her, policy does not provide for her actual utility expenses to be counted instead of the SUA deduction amount.
- 5) Based on the information provided during this hearing, the Department was correct in its decision to provide the Claimant with a four hundred dollar (\$400.00) SUA deduction, and was correct in its decision to count the six hundred dollar (\$600.00) monthly adoption assistance payment as unearned income for SNAP purposes.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department in affording the Claimant a SUA deduction in the amount of four hundred dollars (\$400.00), and **uphold** the Department in the decision to count the six hundred dollar (\$600.00) adoption assistance payment as unearned income.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of July, 2011.

**Cheryl Henson
State Hearing Officer**