



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

March 30, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 24, 2011. Your hearing request was based on the Department of Health and Human Resources' action to terminate your SNAP benefits due to household composition.

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 are based on current policy and regulations. Some of these regulations state that all individuals who both live together and purchase and prepare meals together must be included in the same assistance group (AG). (West Virginia Income Maintenance Manual Section 9.1.A)

The information submitted at your hearing reveals that the totality of evidence provided supports that your husband lives in your household, and as a result of his added earned income, you are not eligible for SNAP benefits.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in terminating your SNAP benefits.

Sincerely,

Cheryl Henson, State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Barbara Polen, [REDACTED] DHHR

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

-----,

Claimant,

v.

Action Number: 11-BOR-563

**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 March 24, 2011 on a timely appeal filed January 31, 2011.

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
-----, Claimant's witness, participated telephonically
-----, Department's witness, participated telephonically
Tera Pendleton, Department representative

Tammy Drumheller, Department witness
Debra Krasnyk, Department's witness

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to add the Claimant's husband to the Claimant's case and then terminate SNAP benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual §9.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case comments from Department's computer system
- D-2 Notification letter dated December 8, 2010
- D-3 WV Income Maintenance Manual Section 9.1.A
- D-4 Submission Details from Customer Service Center dated October 25, 2010
- D-5 Kanawha County Sheriff's Tax Office information for Tax Year 2010
- D-6 Vehicle System Master Inquiry screen from Department's computer system
- D-7 Income Verification from [REDACTED] employer for -----
- D-8 Sworn written statement from neighbor SD dated November 18, 2010
- D-9 Sworn written statement from neighbor IM dated November 19, 2010
- D-10 New Hire Information from Department's computer system dated March 24, 2011
- D-11 Computer screen prints from Department's Child Support computer system

Claimant's Exhibits:

- C-1 Written letter from ----- dated March 20, 2011
- C-2 Letter from [REDACTED]
- C-3 Copy of -----driver's license
- C-4 Letter from -----dated March 22, 2011
- C-5 Letter from ----- dated March 18, 2011
- C-6 Letter from neighbor - undated

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving SNAP benefits when on or about December 8, 2010 the Department notified her that her SNAP benefits would terminate effective December 31, 2010.

- 2) The Department representative, Tera Pendleton, testified that the Department received a Front-End Fraud Unit (FEFU) Investigative Report from the FEFU on December 7, 2010. She added that this report indicated that the FEFU had determined that the Claimant's husband, ----, was living in her household and that he was employed. She stated that the Department took action at that time to add the Claimant's husband and his income to her SNAP benefits case and that this action caused her household to be ineligible due to excessive income.
- 3) The Claimant does not dispute that if her husband were to be included in her assistance group for SNAP that her household would not be eligible for the program; however, she claims that he does not live with her and should not be added to her assistance group. Therefore, the income calculations will not be reviewed in this hearing. The only issue to be decided is whether the evidence supports that ---- lived with the Claimant at the time of the Department's action in December 2010.
- 4) Tammy Drumheller is a FEFU investigator and works for the [REDACTED] County Department of Health and Human Resources (DHHR) in [REDACTED]. She testified that she received a complaint from another Department employee who reported that ---- was living with the Claimant. After receiving the complaint, she conducted an investigation into the household composition in this case. She stated that she researched databases, gathered information from outside sources, and spoke with witnesses as part of her investigation, and determined as a result that ---- was married to and living with the Claimant.
- 5) The Department presented evidence from the Customer Service Center (D-4) in the form of a "Submission Details" form, which is reportedly a form that is completed online by an individual in order to report changes or make reports about case circumstances to the Department. This evidence shows that an individual named [REDACTED] a reported DHHR employee, submitted information about the Claimant's household circumstances on October 25, 2010. She reported the following pertinent information:

---- is reporting that her husband no longer lives in the home with her and her daughter in order to qualify for government assistance. However, I am a neighbor of hers and I have seen her husband in the home every day for the past year. He is currently living there and they have not separated [sic]. He also holds a full-time job where he reportedly makes decent money. ---- has told others in the neighborhood about how she is trying to scam the system.

----was not available for testimony during the hearing. The Department presented additional information from ----in the form of a sworn written statement (D-8) taken by Ms. Drumheller on November 18, 2010, in which ----stated that she has worked for DHHR for three (3) years. In her statement, she provided that she has lived at [REDACTED] since November 2009. She provided that she knows the Claimant and [REDACTED] lived at [REDACTED] when she moved into her home in November 2009. She stated that she lives approximately fifty (50) yards from their home. She stated that she "sees" ---- at the residence every day, enough to know that he lives there. She stated that she became aware of the situation through conversations with neighbors.

- 6) Additional evidence from the Kanawha County Sheriff's Tax Office (D-5) shows that both the Claimant and ---- owned property in Kanawha County for tax year 2010. This evidence indicates they both reside at the same address.

- 7) Additional evidence from the Department's computer system's cross-match with the Department of Motor Vehicles' records (D-6) shows that both [REDACTED] and ----- own a 2006 Toyota Tacoma. The original title date is listed as September 14, 2006, and lists their mailing address as the same. This information is shown to be last modified on September 16, 2010.
- 8) Additional evidence (D-7) from -----'s employer in the form of an "Employment Data" form shows that he became employed with '[REDACTED]' business on January 18, 2008. The employer lists -----'s address at the time of employment as the same as the Claimant's address. He is listed as being married with one (1) daughter and claims "married" status for tax purposes. The document also indicates that he pays for spousal insurance. The form is signed on December 2, 2010 by the "HR" Director. Additional evidence attached to this form includes verification of wages paid to -----.
- 9) Additional evidence (D-9) in the form of a sworn written statement taken by Ms. Drumheller from ----- on November 19, 2010 provides that ----- lives on '[REDACTED]' and has lived in the neighborhood for about thirty six (36) years. She mentions that she has known ----- since he was a teenager, and that she knows some of his relatives. She stated that ----- moved into the house on '[REDACTED]' seven (7) years ago when the couple married. She stated that she sees ----- "about" every evening. She stated that ----- has never moved out of the home. She stated that -----'s mother lives in Glasgow and that he sometimes visits her. She stated that she does not know if ----- is employed. She added that -----'s step-father has told her that the Claimant and ----- come to his home and "get their food". She added that the Claimant's child is not mistreated and is a healthy, pretty girl. She stated that she can see the Claimant's home from her kitchen window.
----- testified during the hearing by telephone, and reiterated that she did make the statements given in the November 19, 2010 sworn written statement. She testified that during the past six (6) weeks or so ----- has not been as visible or been seen as often as before, and that his grandmother informed her that he and the Claimant were separated. She added that -----'s grandmother did not tell her when the separation occurred, and she has surmised that it may have been recently. She stated that -----'s grandmother contacted her by telephone about six (6) weeks ago and was asking her questions as to what occurred when the Department workers were at her home. On cross examination, ----- stated that she cannot see the Claimant's front door. She added that ----- was seen "coming and going" so many times from the Claimant's home that she "took it for granted" that he was living there. She said that he was seen "going out and catching a ride" early in the morning and then coming back in the afternoon. The Claimant pointed out that she was married eleven (11) years ago, not seven (7) as was reported by [REDACTED] and offered that if she could get that wrong, she could get other facts wrong as well.
- 10) The Department provided evidence (D-10) in the form of a computer data screen printout from one of the Department's cross-matches with employment programs. This document shows that as of January 14, 2011 ----- was employed with [REDACTED] and listed his address the same as the Claimant's address.
- 11) Additional evidence (D-11) from the Department's child support computer system shows that -----'s residential and mailing address was listed with the Child Support Unit the same as the Claimant's address on April 29, 2010.

- 12) The Claimant testified that she and ----- are separated but are trying to work out their marital problems. She stated that he pays all her bills because she does not have a job.
- 13) The Claimant presented evidence (C-1) in the form of a written letter from ----- dated March 20, 2011, in which he states that he does not live with the Claimant. He states that "close" to two (2) years ago, he and the Claimant decided to separate. He states that he pays all the bills for the marital home in which the Claimant lives, but does not pay additional child support. He states that he sometimes stays next door at his grandmother's home in order to see his family, and tries to come to Elkview "every chance I get." He states that on very rare occasions he has spent the night with the Claimant. He added that he gets his mail forwarded to his mother's house as that is where he is currently living. He stated the reason his name continues to be listed on the mortgage and the utilities is because the Claimant cannot pay them herself.
- 14) The Claimant presented evidence (C-2) in the form of a letter from -----'s psychiatrist which speaks to his treatment for opioid dependence, but does not add any information regarding household living arrangements.
- 15) The Claimant presented evidence (C-3) in the form of a letter from -----'s mother dated March 22, 2011, in which she states that ----- has been living with her since November 2009. She adds that the Claimant and ----- have been separated since before that time, and that -----'s mail is forwarded to her post office box. She states that the Claimant had informed her that a DHHR officer came by her home and interviewed her, and that she supposedly told them that ----- did not live with her. She denied the allegation, and stated that she has never spoken with anyone at or from the DHHR.
- 16) The Claimant contends that Ms. Drumheller told her during a previous meeting at the DHHR office that she had spoken with -----'s mother, and that this woman reported to her that ----- did not live with her.
- 17) Ms. Drumheller testified that she did not tell the Claimant that she spoke with -----'s mother. She stated that she told her that she went to -----'s mother's neighborhood and could not find anyone who could report that ----- lived with his mother.
- 18) Debra Kraszyk is an Income Maintenance Specialist who works in the [REDACTED] County DHHR office in [REDACTED] West Virginia. She testified that she was present at the previous meeting between Ms. Drumheller and the Claimant. She stated that she told the Claimant that because the information she was providing was in conflict with what Ms. Drumheller had provided, the case would have to go to a hearing. She stated that Ms. Drumheller did not tell the Claimant that she had spoken with -----'s mother. She added that the conversation during the meeting was at times heated with people talking at the same time, and that it was entirely possible that there could have been a misunderstanding as a result.
- 19) The Claimant presented a letter from -----(C-4) dated March 18, 2011, in which ----- states that ----- has been staying with her on most weekends for the past twenty two (22) months in order to visit with his daughter. She stated that during that time he has not stayed at the Claimant's house, except for two (2) occasions he stayed there to care for his daughter due to the Claimant's illness. ----- also testified by telephone and corroborated her written statement. ----- is -----'s grandmother.

- 20) The Claimant also presented a statement (C-5), from one of her neighbors, which is not dated. In the statement, the neighbor provides that ----- has lived at [REDACTED] West Virginia on and off for over two years, and that she has known ----- “since he was growing up.” She adds that she sees his truck every day and night in front of his mother’s home in [REDACTED] and has talked to him countless times in her front yard. She adds that she owns the “trailer” beside his mother. The Claimant clarified these comments by saying that this neighbor does not live in the “trailer” but rents it out; however, she said that the neighbor is there almost every day.
- 21) The West Virginia Income Maintenance Manual §9.1 A states in pertinent part:

SNAP ELIGIBILITY DETERMINATION GROUPS

A. THE ASSISTANCE GROUP (AG)

1. Who Must be Included

The SNAP AG must include all eligible individuals who both live together and purchase and prepare their meals together.

The following shows the make-up of a SNAP AG.

b. Individuals or Groups of Individuals Living with Others

(1) Purchase and Prepare Together

A group of individuals who live together, and for whom food is customarily purchased and prepared together, is an AG.

Customarily is used to mean over 50% of meals on a monthly basis.

VIII. CONCLUSIONS OF LAW:

- 1) The question before the Board of Review is whether or not the evidence shows that the Claimant’s husband, -----, lived with her at the time of the Department’s action to terminate eligibility in December 2010.
- 2) Policy provides that for SNAP, all individuals who both live together and customarily purchase and prepare meals together must be included in the same AG. Customarily is used to mean over 50% of meals on a monthly basis.
- 3) Policy is clear in that if ----- is found to be living with the Claimant, he must be included in the Claimant’s SNAP case.
- 4) Relevant evidence supporting that ----- was living with the Claimant at and around the time of the Department’s action includes two (2) statements submitted to the Department from another Department employee who lives in the Claimant’s neighborhood (D-4, D-8), one of which was a sworn written statement, county tax records (D-5), Department of Motor Vehicles’ records (D-6), employer records (D-7), one (1) sworn written statement from a neighbor (D-9), in person

testimony from neighbor -----, New Hire information from the Department's computer system (D-10), information from the Department's Child Support records (D-11), and testimony from Ms. Drumheller regarding her findings during the investigation. The witness statements all attest to seeing ----- entering and exiting the home daily.

- 5) Relevant evidence supporting that ----- was not living with the Claimant at and around the time of the Department's action includes a written statement from ----- (C-1), a written statement from -----'s mother (C-3), a written statement from -----'s grandmother (C-4), a written statement from an individual who owns a "trailer" next to -----'s mother in the [REDACTED] area (C-5), testimony from the Claimant, and testimony from -----'s grandmother.
- 6) The totality of the evidence supports that ----- was living with the Claimant at and around the time of the Department's December 2010 action to terminate the Claimant's SNAP eligibility. Although there is some evidence to support that ----- did not live with the Claimant, most of that evidence is derived from relatives involved with the Claimant and ----- . There is one statement from a non-relative in support of ----- not living with the Claimant; however, although this individual owns a home in the [REDACTED] area near -----'s mother and claims to have been friends with her for more than ten (10) years, she does not live in that neighborhood. In her statement, she claims to see -----'s truck every day and night in front of his mother's home. Her statement is not dated.
- 7) The written evidence from the various Department records, along with written evidence from the Department of Motor Vehicles, employer and county tax records, support that ----- lived with the Claimant during the period in question. In addition, one (1) sworn written statement from a non-relative, two statements from a Department employee, one of which is a sworn written statement, and in person testimony from a neighbor and Ms. Drumheller, add more weight to the Department's evidence in support of ----- living with the Claimant.
- 8) Therefore, the Department was correct in its decision to terminate the Claimant's SNAP benefits based on the information submitted during this hearing.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's action to terminate the Claimant's SNAP benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of March, 2011.

**Cheryl Henson
State Hearing Officer**