



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

April 20, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 19, 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). Spouses who live together must be included in the same AG regardless of whether they purchase and prepare meals together. (West Virginia Income Maintenance Manual Section 9.1.A)

The totality of the information submitted at your hearing 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
Tera Pendleton, Kanawha DHHR

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

-----,

Claimant,

v.

Action Number: 11-BOR-606

**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 April 19, 2011 on a timely appeal filed January 26, 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

Tera Pendleton, Department representative
Tammy Drumheller, Department witness
Christina Saunders, Department 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 her SNAP benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual §9.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice dated January 28, 2011
- D-2 Income verification dated August 9, 2010
- D-3 Computer screen prints from Department's Child Support computer system
- D-4 Documentation of statements made by Claimant on January 24, 2011
- D-5 Documentation of statements made by Claimant's spouse on January 24, 2011
- D-6 Copy of Claimant's spouse's online networking "Facebook" account information
- D-7 Copy of Claimant's online networking "Facebook" account information

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving SNAP benefits when on or about January 28, 2011 the Department notified her that her SNAP benefits would terminate effective February 28, 2011.
- 2) The Department representative, Tera Pendleton, testified that the Department received a Front-End Fraud Unit (FEFU) Investigative Report from the FEFU on January 27, 2011. 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 the Claimant 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 January 2011.
- 4) Christina Saunders is a FEFU investigator and she works for the [REDACTED] County Department of Health and Human Resources (DHHR) in [REDACTED] West Virginia. She testified that she received a complaint from another Department employee who reported that the Department suspected 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 both the Claimant and --- -- as part of her investigation, and determined as a result that ----- was residing with the Claimant during the month of January 2011.
- 5) Ms. Saunders testified that she and another FEFU investigator, Tammy Drumheller, went to the Claimant's home on January 24, 2011. She stated that ----- answered the door, and identified himself as "-----," also informing them that he lived in the household. She documented (D-5) his comments, based on her own recollection, on a "statement" record indicating that she recalled him making the following comments on that date: "Yes, I am ----- . I am living here. Well, I am a truck driver and I am gone, but home on weekends. I am getting ready to leave now." The statement was dictated at 12:40 p.m. on that date. ----- did not sign the document.
- 6) Ms. Saunders also stated that the Claimant was present during the January 24, 2011 home visit. She added that the Claimant was upset and yelling during the visit. She presented a "statement" record (D-4) which documented comments made by the Claimant based on her own recollection. The Claimant did not sign the document. In it, Ms. Saunders documented that the Claimant stated that she is "still married" but "I can have a boyfriend." She commented that she was "sick of being harassed by DHHR." According to the documentation, the Claimant stated that she does not know where ----- lives, but "I know it is somewhere in [REDACTED]" The worker documented that the Claimant would not provide the last name of the man in her home, but confirmed that his name was "-----."
- 7) The Department contends that ----- was present during the January 24, 2011 home visit, and that the Claimant and ----- were attempting to conceal that information from the Department by not providing his complete identity and last name. Ms. Saunders stated that she asked for ----- to come to the door and speak with her, but he declined. Ms. Drumheller added that the Claimant referred to her husband as her "boyfriend" during the visit.
- 8) The Department presented written evidence from -----'s employer, [REDACTED] Trucking, L.L.C., which shows (D-2) that ----- has been employed with the company since August 20, 2009 and that he works fifty (50) hours per week. The documentation shows that ----- utilizes the same physical address as the Claimant for work purposes, and that his filing status for tax purposes is single, with zero (0) dependents. Also included in this evidence is a record of pay for ----- which begins on September 8, 2009 and continues through December 22, 2010. The statement

was completed on December 30, 2010 and indicates ----- continues to be employed with the company.

- 9) Additional evidence from the Department's Child Support computer system (D-3) shows that --- is listed as having the same physical address as the Claimant as of October 29, 2009.
- 10) Additional evidence (D-6, D-7) from the online networking site entitled "Facebook" shows that ----- has a Facebook account, and that as of January 24, 2011 he reported on this site that he is "Married to -----", and includes as his profile picture a picture of him posing with the Claimant. Additionally, under the section marked "Basic Information" he wrote "My Wife ----- and I in WEST VIRGINIA I am happily married for 4 years. We have 6 kids all together. My family is very important to me." He indicates that his anniversary is "January 26, 2007." The Claimant's Facebook account, as of January 24, 2011, shows she posted a profile picture which includes her husband and children along with herself.
- 11) Tammy Drumheller, a FEFU investigator, testified that she was present during the January 24, 2011 home visit to the Claimant's home. She corroborated Ms. Saunder's statements regarding the visit. She added that they did not enter the Claimant's home due to the Claimant's demeanor at the time. She stated that the Claimant was "screaming and cursing" and that she slammed the door while they were on the front porch. She stated that the man who answered the door is the same man whose picture is shown in the Claimant's Facebook account profile picture as well as in the Facebook account profile picture for -----.
- 12) The Claimant testified that ----- is her husband, but that he does not live with her. She stated that he is there a lot, but he does not live there. She added that he visits two (2) to three (3) times per week and stays the night with her. She stated that he does not have a separate physical address, but that when he is not with her he stays with friends or others, and sometimes in his truck. She stated that, in regard to the Facebook account information, the information was entered on those sites "a long time ago" and has not been updated. In regard to her husband not coming to the door to speak with Ms. Saunders, she added that he was not properly dressed to go outside and speak with her. The Claimant also stated that she files her taxes jointly with her husband because she was under the impression that she could not file separately from him. She denied being upset while the Department workers were at her home.
- 13) 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.

(2) Purchase and Prepare Separately

Individuals or groups of individuals living with others, but who customarily purchase food and prepare meals separately, are an AG.

EXCEPTION: The following individuals who live together must be in the same AG, even if they do not purchase and prepare meals together.

* Spouses are individuals who are married to each other under state law.

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 January 2011.
- 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. Spouses who live together must be included in the same AG, regardless of whether they purchase and prepare meals separately.
- 3) Policy is clear in that if ----- is found to be living with the Claimant, he must be included in her SNAP case.
- 4) Relevant evidence supporting that ----- was living with the Claimant at and around the time of the Department's action includes statements from two (2) Department employees regarding observations made during a January 24, 2011 home visit, as well as written documentation of their observations (D-4, D-5). Additionally, written evidence from both the Claimant's and -----'s Facebook accounts (D-6, D-7) supports that the two are living together. Written documentation from the Department's Child Support computer system (D-3), as well as from -----'s employer (D-2), also supports that ----- resides with the Claimant. The Claimant's testimony regarding filing tax documents under the status "married filing jointly" also supports that ----- lives with the Claimant.
- 5) Relevant evidence supporting that ----- was not living with the Claimant at and around the time of the Department's action includes statements from the Claimant.
- 6) The totality of the evidence supports that ----- was living with the Claimant at and around the time of the Department's January 2011 action to terminate the Claimant's SNAP eligibility. Although the Claimant stated that ----- does not live with her, the totality of the evidence suggests otherwise.

7) 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 20th Day of April, 2011.

**Cheryl Henson
State Hearing Officer**