



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

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

December 22, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 14, 2011. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the Low Income Energy Assistance Program (LIEAP).

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 for the Low Income Energy Assistance Program is based on current policy and regulations. Some of these regulations state as follows: The total monthly gross income of the Assistance Group must not be more than the maximum allowable gross income amounts in the chart in Chapter 10, Appendix A (West Virginia Income Maintenance Manual Chapter 26.2).

Information submitted at the hearing reveals that you failed to verify your daughter's Social Security income was being withheld from her by her father.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your application for the Low Income Energy Assistance Program based on excessive income.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Mark Kennedy, WVDHHR

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2510

**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 convened telephonically on December 14, 2011 on a timely appeal filed December 5, 2011.

II. PROGRAM PURPOSE:

The goal of the Low Income Energy Assistance Program (LIEAP) is to provide financial assistance to eligible households affected by the rising costs of home heating that are excessive in relation to household income. It is not the purpose of this program to meet the entire cost of home heating during the winter season. Instead the program is designed to partially offset the continuing rise in costs of home heating.

III. PARTICIPANTS:

-----, Claimant
Barry Dempsey, Economic Service Worker, WVDHHR

Presiding at the hearing was Pamela L. Hinzman, 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 took the correct action in denying the Claimant's application for the Low Income Energy Assistance Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 4.1, 26.1, 26.2 and 10, Appendix A

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Verification checklist dated October 7, 2011
- D-2 Claimant's request to Social Security Administration to become payee for -----'s Social Security income
- D-3 Information from Social Security Administration dated November 30, 2011
- D-4 Notices of Decision sent to Claimant on September 28, 2011, November 7, 2011 and December 14, 2011
- D-5 None received
- D-6 Supplemental Nutrition Assistance Program (SNAP) Redetermination completed by Claimant on October 7, 2011

VII. FINDINGS OF FACT:

- 1) On November 4, 2011, the Claimant was considered for automatic Low Income Energy Assistance Program (LIEAP) benefits.
- 2) The Claimant was notified of the denial of LIEAP benefits in a Notice of Decision dated November 7, 2011 (D-4). The letter indicates that the Claimant failed to provide all requested verification and that her household income exceeded the gross income limit for the program. Exhibit D-4 indicates that the Claimant's total gross household income was \$2,116 at the time LIEAP was considered, and that the gross income limit for the program is \$1,594 for a two-person Assistance Group.
- 3) Economic Service Worker Barry Dempsey testified that the Department had previously determined – via computer data exchange with the Social Security Administration (SSA) - that the Claimant's daughter, -----, was receiving Social Security benefits of \$761 per month. The Department had issued a verification checklist (D-1) to the Claimant on October 7, 2011. In the request, the Department asked the Claimant to provide documentation that [REDACTED] was not receiving the Social Security income, as the Claimant contended that the Social Security was being sent to the child's father and that he had not forwarded the money to the Claimant or her daughter. The Claimant failed to supply the requested verification from the child's father. The Department received statements from the Social Security Administration (D-2 and D-3), dated November 30, 2011, verifying that the Social Security benefits had been paid to the child's father from February 2011 to "the present time," and that the Claimant had made an application with the SSA to become the new payee for [REDACTED] Social Security benefits.

4) The Claimant did not dispute the Department's income calculations, but testified that [REDACTED] Social Security was not being received in her household and should not have been considered in the income calculation. The Claimant contended that she is unable to obtain a statement from the child's father because she fears him. The Economic Service Worker testified that – without verification from the child's father – the Department could not confirm that the Social Security was being withheld from the Claimant's daughter. Therefore, the Social Security payment was counted as the child's income.

5) West Virginia Income Maintenance Manual Section 26.2.A.1 states:

The total monthly gross income of the assistance group (AG) must not be more than the maximum allowable gross income amounts in the chart in Chapter 10, Appendix A. No income deductions or disregards apply except the determination of gross profit for self-employment. When the gross monthly income of the AG exceeds the maximum allowable income amounts, the group is ineligible for LIEAP and the application is denied.

6) West Virginia Income Maintenance Manual Section 26.2.A.1.a, states that income received or expected to be received in the month of application is used to determine eligibility for LIEAP benefits.

7) West Virginia Income Maintenance Manual Section 26.1.A addresses the issuance process for automatic LIEAP payments:

A. AUTOMATIC PAYMENTS

Households who indicated on RAPIDS screen ASEQ that they would like to be evaluated for an automatic issuance of LIEAP, if determined eligible, will not be mailed a LIEAP application. These households will be mailed a LIEAP Pre-Authorization Notice, DFA-LIEAP-9, that will consider them for an automatic LIEAP payment once returned to the Department of Health and Human Resources (DHHR). To be eligible for this automatic payment the household must use electric or natural gas as their main heat source and their heating provider must be regulated by the Public Service Commission (PSC) of West Virginia. If the household fails to complete the notice and return it to DHHR by the due date, it will not be considered for an automatic payment. No further action is required once the completed DFA-LIEAP-9 is received as long as all other eligibility requirements are met. The household will be sent an approval notice and the payment will be sent directly to their electric or natural gas provider. A denial notice will be issued if the household does not meet eligibility requirements. If a household received LIEAP the previous year and the DFA-LIEAP-9 is not returned, an application will be mailed to them at a later date. Once the notice is received it is the responsibility of the Worker to enter the information on RAPIDS screen BIHP.

- 8) West Virginia Income Maintenance Manual Chapter 26.A.1 (d) provides a list of income exclusions for LIEAP, however, there are no provisions concerning withheld or unavailable income.
- 9) West Virginia Income Maintenance Manual Chapter 10, Appendix A states that the gross income limit for LIEAP for a two-person Assistance Group is \$1,594.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that eligibility for LIEAP benefits is based on total gross, non-excluded household income and the number of individuals in the Assistance Group. Income received or expected to be received in the month of application is used to determine eligibility.
- 2) While the Department received documentation from the Social Security Administration verifying that the Claimant's daughter's Social Security income was being sent to the child's father, no information was provided to demonstrate that the father – upon receipt - was withholding the payment from the child. Moreover, LIEAP policy contains no provisions for withheld or unavailable income.
- 3) Based on information provided during the hearing, the Department's action in denying the Claimant's LIEAP application is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying the Claimant's LIEAP application based on excessive income. It should be noted that the Claimant requested that the Hearing Officer render a decision concerning the termination of her SNAP benefits, however, information submitted to the Department did not indicate a desire to appeal the SNAP termination. Therefore, the SNAP termination will not be considered in this decision and will be addressed in a future hearing.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of December, 2011.

**Pamela L. Hinzman
State Hearing Officer**