



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100

Earl Ray Tomblin
Governor

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

February 9, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 23, 2010. Your hearing request was based on the Department of Health and Human Resources' reduction of SNAP benefits and termination of Medicaid benefits.

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 SNAP and Medicaid is based on current policy and regulations. Some of these regulations state that future income is anticipated (West Virginia Income Maintenance Manual, Chapter 10.4.A.1; Chapter 10.6.B.1) and that when a reported change results in supplemental benefits, the first effective month is the month following the reporting month (West Virginia Income Maintenance Manual, Chapter 2.2.C).

The information submitted at your hearing revealed that the Department correctly anticipated income, correctly reduced SNAP benefits and terminated Medicaid benefits in response to this income change, and correctly issued supplemental SNAP benefits for loss of income for the month following the reporting month (October 2010).

It is the decision of the State Hearing Officer to **uphold** the action of the Department to reduce SNAP benefits and terminate Medicaid benefits due to the correct treatment of income, and to not issue supplemental SNAP benefits for September 2010 based on loss of income.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Mary Shoemaker, Department Representative

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

-----,

Claimant,

v.

**Action Numbers: 10-BOR-2036 SNAP
10-BOR-2037 Medicaid**

**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 concluded on February 9, 2011 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 November 23, 2010 on a timely appeal, filed October 4, 2010.

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.

The Medicaid categorically related to Aid to Families with Dependent Children Program is designed to provide medical assistance to eligible families with children from the fetal stage to age 18. These dependent children must be deprived of parental support due to the death, continued absence, incapacity, or unemployment of the parents. In addition, the family must meet financial eligibility criteria.

III. PARTICIPANTS:

-----, Claimant
Mary Shoemaker, Department Representative

All persons offering testimony were placed under oath.

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department was correct to reduce the SNAP benefits and terminate the Medicaid benefits of the Claimant based on anticipating future income, and whether or not the Department was correct to issue supplemental SNAP benefits from a verified income reduction in the month following the reporting month.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 2.2; Chapter 10.4; Chapter 10.6; Chapter 10.21

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Summary
- D-2 Case comments screen prints
- D-3 Income verification; loss of employment verification
- D-4 Notification letters
- D-5 West Virginia Income Maintenance Manual, Chapter 10.21

VII. FINDINGS OF FACT:

- 1) Mary Shoemaker, representative for the Department, testified that the Claimant completed a review of eligibility for Medicaid and the Supplemental Nutrition Assistance Program (SNAP) on August 5, 2010. During the review, the Claimant reported new employment, and provided a letter (Exhibit D-3, page 1 of 2) with employment details. -----needed additional information to process the review, and documented the additional information through a phone call to the employer on September 1, 2010. She used an estimate of future income to anticipate monthly earnings over the entire certification period. This income change reduced SNAP benefits and terminated Medicaid benefits.

2) Notification was mailed to the Claimant on or about September 2, 2010, regarding Medicaid termination (Exhibit D-4, pp 1-5 of 13). The notice states, in pertinent part:

1. ACTION: Your AFDC Related Medicaid benefits will stop. You will not receive this benefit after SEPTEMBER 2010
2. REASON: Income is more than the income limit for you to receive benefits.

Notification was mailed to the Claimant on or about September 3, 2010, regarding SNAP benefit reduction (Exhibit D-4, pp 6-11 of 13). The notice states, in pertinent part:

You are approved to get SNAP beginning 10/01/10. You will get \$132.00 each month.

Undisputed testimony confirmed that this allotment additionally represented the September 2010 SNAP benefit level, and that it was a reduction from the previous SNAP benefit level.

3) -----testified that she used the employer's letter (Exhibit D-3, page 1 of 2) and phone contact with the employer to anticipate earned income, listed as \$1857.60 (Exhibit D-4, page 10 of 13) monthly. Her written case summary (Exhibit D-1) provides the employer-verified pay frequency as "every 2 weeks." The employer's letter stated that "...you will complete the minimum line requirement of 135 lines per hour..." and "...you will be paid a rate of \$0.08 per line..." and the phone contact with the employer verified that it would be appropriate to multiply the lines-per-hour rate by the dollar-per-line rate to determine a dollar-per-hour rate ($135 \times \$0.08 = \10.80). The letter stated "...you will be expected to work 40 hours each week..." and multiplying the dollar-per-hour rate by the hours-per-week amount provides a dollar-per-week amount ($\$10.80 \times 40 = \432.00); multiplying a dollar-per-week amount by the weeks-per-pay period provides a dollar-per-pay period amount ($\$432.00 \times 2 = \864.00); multiplying the dollar-per-pay period amount – or average per period amount – by the appropriate multiplier established by policy (see FOF #7) provides the gross monthly earned income amount the Department used ($\$864.00 \times 2.15 = \1857.60).

4) ----- testified that – due to a delayed start date, the variable availability of work, an expectation that the minimum work volume only be met after 30 days, and the fact that her employment was terminated in the month of September 2010 – her actual income for that month was considerably less than the Department's anticipated amount.

5) -----testified that this income reduction from the loss of employment was verified, and that supplemental SNAP benefits were issued for October 2010 but not for September 2010. ----- opined that supplemental SNAP benefits should be issued for September 2010, but -----testified that policy sets the first month for supplemental benefits as the month following the month the change was reported. The loss of employment verification (Exhibit D-3, page 2 of 2) is dated September 29, 2010.

- 6) Policy from the West Virginia Income Maintenance Manual, Chapter 10.21.A, provides the budgeting method for AFDC-Related Medicaid, and states, in pertinent part:

Step 2: Determine the anticipated earned income for each of the 6 months, according to Section 10.6.B.

Policy from Chapter 10.6.B.1 states, in pertinent part (emphasis added):

1. Methods For Reasonably Anticipating Income

There are 2 methods for reasonably anticipating the income the client expects to receive. One method uses past income and the other method uses future income. Both methods may be used for the same AG for the same certification period because the method used varies with the circumstances of each source of income. The situations which prompt usage of one or the other method are listed below. More details are contained in the follow items.

Use past income only when both of the following conditions exist for a source of income:

- Income from the source is expected to continue into the certification period or POC; and
- The amount of income from the same source is expected to be more or less the same.

NOTE: For these purposes, the same source of earned income means income from the same employer, not just the continued receipt of earned income.

Use future income when either of the following conditions exist for a source of income:

- Income from a new source is expected to be received in the certification period or POC; or**
- The rate of pay or the number of hours worked for an old source is expected to change during the certification period or POC.

Policy at Chapter 10.4.A.1 mimics this budgeting method for SNAP, and states, in pertinent part (emphasis added):

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uses future income. Both methods may be used for the same AG for the same certification period because the method used varies with the circumstances of each source of income. The situations which prompt usage of one or the other method are listed below. More details are contained in the follow items.

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Use future income when either of the following conditions exist for a source of income:

- Income from a new source is expected to be received in the certification period; or**
- The rate of pay or the number of hours worked for an old source is expected to change during the certification period.

- 7) The West Virginia Income Maintenance Manual, at Chapter 10.4.A.4 and Chapter 10.6.B.4, provides tables for determining the amount of monthly income for SNAP and AFDC-Related Medicaid, respectively. For both programs – SNAP and AFDC-Related Medicaid – these tables provide the same treatment. When the frequency of receipt is more often than monthly and when the amount fluctuates, policy states “Find Average* Amount/period and Convert to Monthly Amount,” and provides the multipliers (for both programs) for monthly conversion as follows (emphasis added):

Conversion of income to a monthly amount is accomplished by multiplying an actual or average amount as follows:

- Weekly amount x 4.3
- **Bi-weekly amount (every 2 weeks) x 2.15**
- Semi-monthly (twice/month) x 2

The asterisk refers to a note referenced in policy, which for SNAP states (emphasis added):

*NOTE: The purpose of finding an average amount of fluctuating income is to even out the highs and lows in the amount of income. The client is not, then, required to report fluctuating income each pay period and the Worker is not required to change income monthly. See Section 2.2,B for SNAP reporting requirements. **Sometimes the client receives higher benefits than he would if actual income were used and sometimes he receives lower benefits. Therefore, when the Worker has averaged fluctuating income based on the best information available and the client's income does not match the monthly amount used by the Worker, there is no repayment when the client receives higher benefits and no supplemental issuance when the client receives lower benefits.** Should the client report fluctuations in the amount of income, the Worker is only required to recalculate the countable income when, in his judgment, the fluctuation will significantly impact the coupon allotment. All changes reported by the client must be considered, but not necessarily used. Reported changes must be recorded and the Worker must record why the reported income was or was not used.

The asterisk-referenced note differs in AFDC-Related Medicaid policy, and states:

*NOTE: The purpose of finding an average amount of fluctuating income is to even out the highs and lows in the amount of income. The client is not, then, required to report fluctuating income each pay period and the Worker is not required to change income monthly. Should the client report fluctuations in the amount of income, the Worker is only required to recalculate the countable income when, in his judgment, the fluctuation will affect eligibility. All changes reported by the client must be considered, but not necessarily used. Reported changes must be recorded and the Worker must record why the reported income was or was not used.

8) Policy addresses the issuance of supplemental SNAP benefits at 2.2.C, as follows:

C. AGENCY TIME LIMITS

The first month that a reported change is effective is the month following the month the change is reported. The only exception to this is when the Department had the information prior to the month it is reported and failed to act on the information in a timely manner.

1. Increase In Benefits

a. Addition of an AG Member or a Decrease in Income of \$50 or More

The change must be effective no later than the month following the month in which the change is reported. When the change is reported after the data system deadline, supplemental benefits must be issued and

received by the 10th of the following month or by the AG's usual issuance cycle in that month, whichever is later.

The supplemental benefits are issued based upon the date the information is reported, regardless of whether or not the report is timely. Supplemental benefits issued in this situation are not considered restored benefits and, therefore, not used to offset a repayment as described in item E,1 below.

VIII. CONCLUSIONS OF LAW:

- 1) SNAP and Medicaid policy both require a determination to be made regarding the use of future or past income to anticipate income over the certification period. Because the income in question was from a new source – a new job reported by the Claimant at a review of eligibility – the Department was correct to use future income.
- 2) Policy for both programs provides the method for determining monthly income. Income verification described the income frequency as every two weeks, and set a minimum production requirement (and thereby, a minimum pay expectation) but did not set a fixed income amount. The Department was correct to treat the income as more often than monthly and fluctuating, requiring the use of a monthly conversion multiplier applied to an average pay amount per period. Because pay was expressed in terms of volume (\$0.08 per line), and work in terms of expected volume per unit of time (135 lines per hour), it is correct to multiply these to derive a minimum expectation for hourly pay (\$10.80 per hour). The hourly pay is multiplied by the provided workweek (40 hours), then the number of weeks per pay period (2), and finally by the conversion multiplier given by policy (2.15) to arrive at \$1857.60 in anticipated monthly income. Because this matches the amount determined by the Department, their income calculation is correct. The Department was correct to reduce SNAP benefits and terminate Medicaid benefits accordingly.
- 3) Testimony from the Claimant described the reasons that this anticipated income was not met, but none of this information was documented by the employer. Once the Department received verification that the actual income for September 2010 was lower than anticipated – because of the reasons given by the Claimant, and because of loss of employment – the process to issue supplemental benefits was initiated. The supplemental benefits were issued in October 2010, the month following the month that the information was verified, as required by policy. The Department was correct to only issue supplemental benefits for October 2010.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to reduce the Claimant's SNAP benefits and terminate the Claimant's Medicaid benefits due to income, and the action of the Department to limit supplemental SNAP benefits to October 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of February, 2011.

**Todd Thornton
State Hearing Officer**