



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

Bill J. Crouch
Cabinet Secretary

**Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326**

Jolynn Marra
Interim Inspector General

December 4, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-2554 and 18-BOR-2555

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the Board of Review 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.

You will find attached an explanation of possible actions that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: Justin Thorne, [REDACTED] County DHHR

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

████████████████████,

Appellant,

v.

**ACTION NO.: 18-BOR-2554 and
18-BOR-2555**

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

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on November 27, 2018, on an appeal filed October 12, 2018.

The matter before the Hearing Officer arises from the September 26, 2018 determination by the Respondent to reduce the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits and terminate the Appellant's Medicaid benefits.

At the hearing, the Respondent appeared by Justin Thorne, Economic Service Supervisor. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Income Maintenance Manual (WVIMM) §10.4.2.B.3
- D-2 DHHR Verification Checklist, dated September 4, 2018
- D-3 ██████████ Earnings Statement, dated September 7, 2018
- D-4 DHHR Notice, dated September 18, 2018
- D-5 ██████████ Earnings Statements, dated August 7, 2018; August 22, 2018; and September 7, 2018
- D-6 WVIMM §4.4.1
- D-7 Appellant's Lease Agreement, scanned October 5, 2018
- D-8 ██████████ Earnings Statement, dated October 5, 2018
- D-9 SNAP Budget for the period beginning November 1, 2018
- D-10 Employment Income, beginning September 2018
- D-11 WVIMM §1.4.17.C
- D-12 Respondent Hearing Summary
- D-13 DHHR Case Comments, dated July 10, 2018 and October 31, 2018; DHHR Notices, dated September 26, 2018
- D-14 DHHR Case Comments, dated October 12, 2018

Appellant's Exhibits:

- A-1 [REDACTED] Earnings Statement, dated November 7, 2018
- A-2 WV Bureau for Child Support Enforcement (BCSE) Support Payment Information, dated October 2017 through August 9, 2018

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant is a recipient of SNAP and Medicaid benefits. (Exhibit D-4 and D-13)
- 2) The Appellant completed a review in July 2018 and was receiving child support income. (Exhibit D-13)
- 3) During the Appellant's certification period, the Respondent received a new-hire alert regarding the Appellant.
- 4) On September 26, 2018, the Respondent issued a notice advising the Appellant that her SNAP benefits would decrease from \$245 to \$15 per month, effective October 1, 2018, due to changes in the Standard Deduction amount, decrease in the Appellant's shelter/utility costs, and increase in the Appellant's income. (Exhibit D-13)
- 5) On September 26, 2018, the Respondent issued a separate notice advising the Appellant that she was determined to be ineligible for Medicaid due to her income exceeding the Medicaid income eligibility guidelines. (Exhibit D-13)
- 6) The Appellant was employed by [REDACTED] from July 13, 2018 through October 30, 2018 and was paid semi-monthly. (Exhibits D-5 and D-10)
- 7) The Appellant received gross pay of \$1, 440.06 for the period of July 16, 2018 through July 31, 2018. (Exhibit D-5)
- 8) The Appellant received gross pay of \$1,300.32 for the period of August 1, 2018 through August 15, 2018. (Exhibit D-5)
- 9) The Appellant received gross pay of \$1,177.15 for the period of August 16, 2018 through August 31, 2018. (Exhibit D-3)
- 10) All of the Appellant's submitted Earnings Statements from July 13, 2018 through August 31, 2018 reflected overtime pay. (Exhibits D-3 and D-5)
- 11) On October 12, 2018, the Appellant advised the Respondent that she was receiving reduced employment hours and was no longer receiving overtime pay. (exhibit D-14)

- 12) The Appellant received gross pay of \$808 for the period of October 16, 2018 through October 31, 2018. (Exhibit A-1)
- 13) The Respondent's unearned income record reflected that the Appellant received \$755.29 per month in child support beginning June 2018. (Exhibit D-10)
- 14) The Respondent included the \$755 per month unearned income when calculating the Appellant's SNAP benefit allotment, effective October 1, 2018. Child support was not considered when determining the Appellant's Medicaid eligibility. (Exhibit D-13)
- 15) The Appellant received her last current child support payment on July 13, 2018, in the amount of \$755.29, and received an arrears to family payment in the amount of \$2,312.42 on August 9, 2018. The Appellant did not receive any BCSE support payments following the August 9, 2018 payment. (Exhibit A-2)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) §1.2.2.C provides in part:

When an eligibility review occurs between eligibility redeterminations, changes in eligibility or the benefit amount may occur. If so, eligibility system action and client notification of any changes are required [emphasis added].

WVIMM §1.2.4 provides in part:

The client's responsibility is to provide complete and accurate information about his circumstances so that the Worker is able to make a correct determination about his eligibility.

WVIMM §4.3.1.j provides in part:

Wages (compensation as an employee) are counted as earned income for SNAP and Medicaid.

WVIMM §4.6.1. provides in part:

Eligibility is determined monthly. Therefore, it is necessary to determine a monthly amount of income using earned and unearned income to count for the eligibility period. The Worker must determine the amount of income that can be reasonably anticipated.

WVIMM §4.6.1.A provides in part:

Use past income to reasonably anticipate income when both following conditions exist for a source of income:

- Income from the source is expected to continue into the certification period or POC.
 - The amount of income from the same source is expected to be more or less the same.
- For these purposes, the same source of earned income means income from the same employer, not just the continued receipt of earned income.

WVIMM §9.3.1 provides in part:

A client must receive advance notice in all situations involving adverse actions except those described in the Adverse Actions Not Requiring Advance Notice Section. The advance notice requirement is that notification be mailed to the client at least 13 days prior to the first day of the month in which the benefits are affected.

WVIMM §9.3.1.A provides in part:

Notice of Adverse Action is required for SNAP closures or decrease.

WVIMM §9.3.1.C provides in part:

The 13-day advance notice period begins with the date shown on the notification letter. It ends after the 13th calendar day has elapsed. If the 13-day notice period ends on a weekend or holiday, the action is taken on the first subsequent workday.

WVIMM §9.3.1.D.2 provides in part:

If the 13-day advanced notice period does not expire until the first day of the following month or later, the change is not effective until the month following the end of the 13-day advanced notice period.

WVIMM §10.4.2.B.3 provides in part:

If the Worker receives a new-hire alert during the certification period, the Worker is required to pursue clarification of the information and require verification, if needed. The Worker must follow up on unclear information during the certification period when the information would have to be reported under the household's reporting requirements and the information is fewer than 60 days old from the current month. If the household does not meet this criterion, then the information should not be acted upon until next SNAP application, redetermination, or contact form.

DISCUSSION

The Appellant is a recipient of SNAP and Medicaid benefits. On September 26, 2018, the Respondent issued separate notices advising that the Appellant's monthly SNAP allotment would decrease, effective October 1, 2018, and that her Medicaid benefits would be terminated, effective November 1, 2018, due to an increase in her income. The Appellant argued that she is no longer receiving earned or unearned income and that the overtime pay she received at the time of the Respondent's determination should not have been included in her income calculations.

The Respondent had to demonstrate by a preponderance of evidence that the Appellant received proper notice of adverse action and that the Appellant's income was correctly applied to determine her Medicaid eligibility and monthly SNAP allotment amount. The Appellant contested the use of child support income when calculating the amount of her income to determine her monthly SNAP allotment. Child support payments were not included as income when determining the Appellant's Medicaid eligibility.

Policy requires that the Respondent issue a 13-day advanced notice of adverse action when decreasing the amount of the Appellant's monthly SNAP allotment. Pursuant to policy, the 13-day advanced notice must

be mailed to the Appellant at least 13 days prior to the first day of the month in which the benefits are affected. On the Respondent's September 26, 2018 notice, the decrease in the Appellant's SNAP allotment was effective October 1, 2018, five days following the issuance of the notice of adverse action. The September 26, 2018 notice of adverse action would not have expired until the 13th calendar day had lapsed. The 13th calendar day would have been October 9, 2018, which was eight days after the onset of the October 1, 2018 reduction of the Appellant's monthly SNAP allotment. Pursuant to policy, if the 13-day advanced notice period does not expire until the first day of the following month or later, the change is not effective until the month following the end of the 13-day advanced notice period; therefore, the change in the Appellant's SNAP benefits should not have been effective until November 1, 2018.

Pursuant to policy, the Respondent was required to seek verification of the Appellant's employment income when a new-hire alert was received. The Appellant submitted paystubs to the Respondent to verify her employment income. The Respondent testified that because the Appellant had received overtime on all the paystubs submitted for earned income verification, that overtime could be reasonably anticipated and was included in the Appellant's monthly income calculations. The Respondent further testified that the past income reflected on the Appellant's pay stubs was used to reasonably anticipate income when determining eligibility. The Appellant did not contest the amount of income on the paystubs or that she had received overtime pay as reflected on the paystubs. The Appellant argued that working overtime was voluntary and that voluntary overtime income should have been excluded. Policy provides that wages or compensation received as an employee are counted as earned income for the Medicaid. Policy does not provide an income exclusion for overtime wages.

On October 12, 2018, the Appellant advised the Respondent that she was receiving reduced employment hours and was no longer receiving overtime income used to determine her SNAP allotment amount and Medicaid eligibility. The Appellant has the responsibility to inform the Respondent of her circumstances so that the Respondent can make a correct determination regarding her eligibility. The Appellant did not report changes in her earned income to the Respondent until October 12, 2018; therefore, the Respondent could not have considered a reduced amount of income in making the September 26, 2018 determination regarding the Appellant's Medicaid eligibility.

The Respondent failed to demonstrate by a preponderance of evidence that the Appellant had received appropriate notice of adverse action on her SNAP benefits. Because proper notice of adverse action was not issued in the matter regarding the Appellant's SNAP benefits, arguments regarding the calculations used to determine the amount of the SNAP benefit amount effective October 1, 2018 were given little weight. However, as the Appellant was not receiving child support payments at the time of the Respondent's determination and she has since reported a decrease in earned income, the Respondent should re-calculate the Appellant's income and make a new determination regarding the amount of her monthly SNAP benefit allotment.

The Respondent demonstrated by a preponderance of evidence that the Appellant's wages were correctly applied when calculating the amount of her monthly income to determine Medicaid eligibility.

CONCLUSIONS OF LAW

- 1) The Respondent was required to issue a 13-day advanced notice of adverse action when decreasing the amount of the Appellant's monthly SNAP allotment.
- 2) The Respondent failed to provide a 13-day advanced notice prior to the October 1, 2018 effective date of adverse action to the Appellant's SNAP benefits.

- 3) The Respondent incorrectly decreased the amount of the Appellant's monthly SNAP allotment, effective October 1, 2018.
- 4) When income from the same source is expected to be more or less the same and continue into the certification period, past income may be used to reasonably anticipate income for Medicaid determination.
- 5) The overtime wages reflected on the Appellant's earned income verification are required to be counted as earned income for the Medicaid eligibility determination.
- 6) The Appellant did not report changes in her earned income until October 12, 2018.
- 7) The Respondent correctly included the Appellant's earned income when determining the Appellant's Medicaid eligibility.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Department's decision to decrease the Appellant's SNAP benefits, effective October 1, 2018. The matter is **REMANDED** for consideration of the Appellant's loss of earned and unearned income and for issuance of a new notice of monthly SNAP allotment determination, effective no sooner than January 1, 2019. If benefits were not continued through the hearing process, it is **ORDERED** that retroactive SNAP benefits be allotted to the Appellant beginning with the October 2018 issuance.

It is the decision of the State Hearing Officer to **UPHOLD** the Department's decision to terminate the Appellant's Medicaid benefits, effective November 1, 2018.

ENTERED this 4th day of December 2018.

Tara B. Thompson
State Hearing Officer