



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 22, 2008



Dear Ms. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 29, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your WV Works and Food Stamp benefits due to excessive self-employment income.

In arriving at a decision, the State Hearings 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 WV Works and Food Stamp program is based on current policy and regulations. Some of these regulations state as follows: When the client reasonably expects to receive income from a new source during the new certification period, only the income which can be reasonably expected to be received is counted (West Virginia Income Maintenance Manual § 10.4 and 10.24).

The information which was submitted at your hearing revealed that the Department failed to provide you with the opportunity to provide a reasonable estimate of your income and expenses to be received from self-employment.

It is the decision of the State Hearings Officer to **reverse** the decision of the Department to terminate your WV Works and Food Stamp benefits.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Carol Groves, Family Support Supervisor

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

Claimant,

v.

**Action Number: 08-BOR-827
08-BOR-849**

**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 April 29, 2008 for [REDACTED]. 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 29, 2008 on a timely appeal, filed January 25, 2008.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.


II. PROGRAM PURPOSE:

The Programs entitled WV Works and Food Stamps are set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

WV Works was created by Senate Bill 140, Article 9 of the West Virginia Code and the Temporary Assistance to needy Families Block Grant, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The purpose of WV Works is to provide assistance to needy families with children so they can be cared for in their own home, reduce dependency by promoting job preparation, work and marriage. The goals of WV Works are to achieve more efficient and effective use of public assistance funds, reduce dependence on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

The purpose of the Food Stamp Program 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.

III. PARTICIPANTS:

 Claimant
Claimant's Grandmother
Claimant's Son
Family Support Supervisor

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department's decision to terminate Claimant's WV Works and Food Stamps was correct.

V. APPLICABLE POLICY:


West Virginia Income Maintenance Manual § 10.4 and 10.24

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-15 Hearing Request received January 25, 2008
- D-16 Notification Letter dated January 18, 2008
- D-17 West Virginia Income Maintenance Manual § 10.24
- D-18 West Virginia Income Maintenance Manual § 10 Appendix A
- D-19 West Virginia Income Maintenance Manual § 10.4
- D-24 Case Comments and Individual Comments from Rapids Computer System from October 19, 2007 – April 7, 2008
- D-27 Advertisement in WV Daily News dated January 16, 2008
- D-41 Department's Case Summary

Claimants' Exhibits:

- C-14 E-mail Correspondence from Claimant to WV Daily News dated January 23, 2008
- C-15 Advertisement in  dated January 14, 2008

VII. FINDINGS OF FACT:

- 1) On January 18, 2008 the Department received a report that Claimant's company, [REDACTED] had an advertisement in the WV Daily News promoting a speed dating event for February 14, 2008 at the [REDACTED] (D-27). The ad read in part:

Gather with 20-100 singles, male and female of all flavors at the [REDACTED] – February 14th. Have 10 one-on-one dates that last 10 minutes each.

Pre-registration required and a \$35 Fee. Accepting Visa, Mastercard, Discover, Debit, American Express and EBT.

- 2) Claimant's self-employment income was anticipated as \$3500 monthly from this endeavor (\$35 multiplied by 100) and added to her case. A notification letter dated January 18, 2008 was issued and read in part (D-16):

Your WV Works and Food Stamps will stop. Income is too much for you to receive benefits. Self-employment income has increased.

- 3) Claimant testified that she had never hidden the fact that she was trying to get her business, [REDACTED] up and running from the Department. She stated there was a mistake in the ad that ran in the WV Daily News saying EBT would be accepted as a method of payment for the speed dating event (D-27). Claimant e-mailed the ads department of the WV Daily News requesting a correction of the ad (C-14). Claimant produced her ad in the [REDACTED] for the same event which did not mention EBT being accepted (C-15).

Claimant contested the amount that was anticipated from the speed dating event by the Department. She stated the maximum amount of people that would have been accepted that night was 100 but there was no way to know exactly how many would actually come to the event. The income of \$3500 monthly from the speed dating also did not take into account her expenses for promoting the event.

She also stated she was never contacted by the Department about the self-employment income. She never received a verification checklist to verify the income, only the closure letter.

Because of the ad in the WV Daily News mentioning EBT being accepted as payment, Claimant testified she was advised by the State Tax Department not to go through with the event. Claimant cancelled the speed dating event and took a loss for the expenses paid out which were never recouped.

- 4) Carol Groves, Family Support Supervisor, conceded that she could not be sure that a verification checklist had actually been sent. With an excessive income of \$3500 being entered into the Rapids Computer System, benefits would most likely have automatically closed without the generation of a verification checklist.

- 5) West Virginia Income Maintenance Manual § 10.4 A(3) and 10.24 A(3) states:

When the client reasonably expects to receive income from a new source during the new certification period, or when the amount of income from an old source

is expected to change, the Worker must consider the income which can be reasonably expected to be received.

When self-employment income is anticipated, proceeds from the sale of capital goods and equipment must be anticipated also.

Steps for Anticipating Income:

Step 1: Determine if the Income Group expects to receive income from a new source, or expects a different amount from an old source, in the new certification period.

If not, none of the following steps are necessary. However, the Worker must record the client's statement that he does not expect income from a new source.

Step 2: Determine the amount of income the client can be reasonably expected to receive from the new source, or the new amount from the old source.

If the amount of income cannot be reasonably anticipated, none of the following steps are necessary and income from this source is not considered for the new certification period. The Worker must record the client's statement that he expects income from a new source or that the amount from an old source will change.

In addition, the Worker must record why the amount of income cannot be reasonably anticipated and information about all the attempts made to determine the amount.

When it is possible to reasonably anticipate a range of income, the minimum amount that can be anticipated is used.

Step 3: Determine when the client can be reasonably expected to receive income from the new source or the changed amount from the old source.

If the date of receipt cannot be reasonably anticipated, income from this source is not considered. The Worker must record the client's statement that he expects income from a new source or a change in the amount from an old source. In addition, the Worker must record why the date of receipt cannot be anticipated and information about attempts made to determine the date of receipt.

Step 4: When the amount and date of receipt can be anticipated, the Worker treats the income according to item 4 below.

The Worker must record how the amount and date of receipt were projected.

6) West Virginia Income Maintenance Manual § 10.4 D(4) and 10.24 D(3) states:

The method used to determine monthly gross income from self-employment varies with the nature of the enterprise. It is necessary to determine which of the following types of self-employment applies to the client's situation. Once the pattern of self-employment has been determined, this is used to determine how the income is counted.

AG's with a new business, that has been in existence less than a year, have their income averaged over the amount of time the business has been in operation. From this, the monthly amount is projected for the coming year. However, if the averaged amount of past income does not accurately reflect the anticipated monthly circumstances because of a substantial increase or decrease in business, the income is calculated based on anticipated earnings.

Incurred business expenses are also averaged over the amount of time the business has been in operation. However, if the averaged amount of past expenses does not accurately reflect the anticipated monthly circumstances because of a substantial increase or decrease in business, the expenses are calculated based on anticipated costs.

Gross profit from self-employment is the income remaining after deducting any identifiable costs of doing business from the gross income.

(1) Deductions

Examples of allowable deductions include, but are not limited to:

- Employee labor costs, including wages paid to an AG member and any salary the client pays himself.
- Stock and supplies
- Raw material
- Seed
- Fertilizers
- Repair and maintenance of machinery and/or property
- Cost of rental space used for conducting the business
- Payments on the principal and interest of the purchase price of income-producing real estate and capital assets, equipment, machinery and other durable goods
- Insurance premiums and taxes paid on the business and income-producing property
- The utilities, principal, interest and taxes for the client's residence which is used in part to produce income. This is applicable only if the costs on the portion of the home used in the self-employment enterprise can be identified separately.
- Advertising costs
- Utilities
- Office expenses, such as stamps, stationery, etc.
- Legal costs

- Net Loss from self-employment farming.

VIII. CONCLUSIONS OF LAW:

- 1) As indicated in policy, the least amount of income to be anticipated is counted until a reasonable pattern can be established. The Department overestimated Claimant's income from the speed dating event and should have used the least amount of income to be anticipated (20 multiplied by \$35 = \$700).

- 2) Furthermore, Claimant was not given an opportunity to provide the Department what she anticipated her income from the speed dating event to be and the expenses involved in promoting the event. Claimant's WV Works and Food Stamp benefits should not have been closed for excessive income without giving the Claimant a chance to give the Department an estimate of what her income would be less her expenses.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to terminate Claimant's WV Works and Food Stamp benefits for excessive income.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of May, 2008.

**Kristi Logan
State Hearing Officer**