



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

June 30, 2015

[REDACTED]

RE: [REDACTED] v WV DHHR
BOR ACTION NOs.: 15-BOR-2221(SNAP) and 15-BOR-2222 (WVW)

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 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.

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

Sincerely,

Donna L. Toler
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Christina Brown, Family Support Specialist

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

██████████,

Appellant,

v.

**Action Nos: 15-BOR-2221 (SNAP) and
15- BOR-2222 (WWV)**

**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' Common Chapters Manual. This fair hearing convened on June 25, 2015, on an appeal filed June 5, 2015.

The matter before the Hearing Officer arises from the May 14, 2015 decision by the Respondent to terminate the Appellant's West Virginia Works caretaker relative benefits and its June 2, 2015 decision to terminate the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Christina Brown, Family Support Specialist. Appearing as a witness for the Respondent was Tammie Drumheller, Front-End Fraud Unit Investigator. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 E-Rapids Case Comments computer screen print, dated May 13, 2015 through May 29, 2015
- D-2 Correspondence from DHHR ██████████ to the Appellant, dated May 14, 2015
- D-3 Verification Checklist, dated May 14, 2015
- D-4 Correspondence from DHHR ██████████ to the Appellant, dated June 2, 2015
- D-5 E-Rapids Case Comments computer screen print, dated June 5, 2015 through June 15, 2015
- D-6 E-Rapids Client Notices Summary, dated April 23, 2015 through June 17, 2015
- D-7 E-Rapids Case Benefit Summary, dated September 2, 2014 through June 2, 2015

- D-8 Correspondence from DHHR [REDACTED] to Appellant, dated June 16, 2015
D-9 West Virginia Income Maintenance Manual Policy §9.21

Appellant's Exhibits:

- A-1 Witness statements

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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant was a recipient and participant in the Department's WV WORKS caretaker relative cash assistance program, as the legal guardian of her minor grandchildren. (Exhibit D-7)
- 2) On May 14, 2015, the Department mailed the Appellant notice that her WV WORKS benefits were being terminated because the Appellant declined the benefit. (Exhibit D-2)
- 3) The Department did not terminate the Appellant's SNAP benefits for the reasons outlined on the May 14, 2015 notice. The WV WORKS benefits were terminated because the Department alleged that the Appellant's son, and biological parent of the children in the Appellant's care, was residing in her household more than 50% of the time.
- 4) The Appellant's son sleeps at the Appellant's house three (3) nights per week, and visits the children for one (1) hour or less each day that he does not spend the night.
- 5) A week consists of 168 hours (24 hours in a day multiplied by 7 days per week). The Appellant's son is in her home approximately 35.5 hours per week. 35.5 hours is approximately 20.83 percent of 168.
- 6) The Appellant is a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits. (Exhibit D-7)
- 7) On May 14, 2015 the Department mailed the Appellant a Verification Checklist requesting she provide verification of her son's employment income on or before May 23, 2015. (Exhibit D-3)
- 8) Verification of the Appellant's son's income was received by the Department on June 5, 2015, however, SNAP benefits were not reinstated. (Exhibit D-5)
- 9) The Appellant's son is not a member of her SNAP Assistance Group (AG).

- 10) The Appellant's son lost possession of his home and has been homeless. He uses his mother's address to receive mail. He owns an All-Terrain Vehicle (ATV) and used his mother's address to title the vehicle. The Bureau of Child Support Enforcement (BCSE) indicated the Appellant's son listed her home as his residence in 2013.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) §9.21, indicates the WV WORKS Assistance Group (AG) includes all minor, dependent, blood-related siblings who live in the same household and live with a specified relative. A custodial parent is defined as the parent with whom the children live more than 50% of the time in a given month.

WV IMM §9.1, provides a list of the Supplemental Nutrition Assistance Program (SNAP) Assistance Groups. Children under age 18 who live with, and are under the parental control of an adult AG member, who is not a parent, must be in the same AG as the member who exercises parental control.

WV IMM 10.4.A, provides the budgeting methods to be used by workers in determining income for an AG. Eligibility is determined and benefits are issued on a monthly basis. Therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. For all cases, the Worker must determine the amount of income (earned and unearned) that can be reasonably anticipated for the AG.

DISCUSSION

The Department erred in sending the Appellant notification that her WV WORKS benefits were closed because she declined the benefit. The Department failed to provide the Appellant with proper notice prior to terminating her benefits.

As a result of testimony presented during the hearing, it was determined that the Department terminated the Appellant's WV WORKS benefits based on a report from the Department's Front-End Fraud Unit (FEFU). FEFU completed an investigation and concluded that the Appellant's son was residing in her home, with his biological children. To support its argument the Department indicated that when the Appellant purchased an ATV he titled it at his mother's residential address, that BCSE listed his mother's address as his address in 2013, and that he received his United States Postal Service (USPS) mail at the Appellant's mailing address.

The Appellant reported that when she applied for WV WORKS benefits, she explained that her son spent some nights in her home. She testified that her worker told her that as long as he was not residing in her home 50% of the time she was eligible to receive WV WORKS benefits as the caretaker relative of her grandchildren. The Department's representative agreed that if her son was in the home less than 50% of the time that she would be eligible for the WV WORKS caretaker benefits.

The Appellant explained that she was granted custody of her grandchildren by the court because neither the biological mother nor the biological father (her son), were able to provide a stable home environment for the children. The Appellant stated that her son had lost his home and was essentially “homeless”, spending some time at her home, some with his current girlfriend and some with the biological mother of his children. Both at the hearing and in a statement with FEFU, the Appellant indicated that her son spends no more than three (3) nights in her home per week, and that he visits almost daily. At the hearing, she added that her son only stays an hour or less on the days when he does not spend the night.

With regard to his mailing address, the Appellant reported that after her son lost his home, she permitted him to receive his mail at her mailing address.

The Appellant added that her son does not pay child support because he does not have sufficient income to do so. She added that she does not know how the BCSE obtained the information regarding her son, or why they would have it. It should be noted that the information obtained from BCSE was from 2013, and did not apply to the time period which is the subject of the Appellant’s appeal.

The Appellant testified that her son does own an ATV and that it is kept at her house. The Appellant reported that because the West Virginia Department of Motor Vehicles (DMV) required an address to title the vehicle, she permitted her son to use hers.

The Appellant provided credible testimony that her son stayed at her home less than 50% of the time. The Appellant provided reasonable explanations as to why her son used her mailing address, both with the USPS and the DMV.

The Department worker indicated that the Appellant’s son was not included in the Appellant’s SNAP AG, but that the Department closed the SNAP benefits for failing to provide verification of his income. SNAP policy requires that the income of all Assistance Group (AG) members be verified. Since the Appellant’s son is not a part of her AG, she is not required to provide verification of his income for SNAP eligibility. The Department erred in terminating the Appellant’s SNAP benefits for failing to verify her son’s income. However, the Department’s representative stated that the SNAP benefit should have been approved, and that the Department would take the necessary corrective action to reinstate the Appellant’s SNAP benefits following the hearing in this matter.

CONCLUSIONS OF LAW

- 1) The Department failed to establish, by a preponderance of evidence, the Appellant’s son resided in her household.
- 2) The Appellant’s son does not stay in her household more than 50% of the time. The Appellant is the appointed legal guardian of her children and policy requires the children be included in the AG of the adult who is responsible for parenting decisions.

- 3) The Appellant's son is not included in her SNAP AG. His income is not required to determine eligibility for SNAP benefits. The Department erred in terminating the Appellant's SNAP benefits for failing to provide verification of her son's income.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Department's decision to terminate the Appellant's WV WORKS and SNAP benefits. Any benefits owed to the Appellant shall be restored in accordance with policy.

ENTERED this ____ day of June 2015.

Donna L. Toler
State Hearing Officer