



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

August 29, 2011

----- and -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 30, 2010. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for SNAP benefits at redetermination.

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 and benefit levels for the Food Stamp Program are based on current policy and regulations. Some of these regulations state that when no one in the assistance group (AG) is elderly or disabled, the AG's gross income must be equal to or less than the gross income limit in Appendix A. If the gross income exceeds the amount in Appendix A, the AG is ineligible. (West Virginia Income Maintenance Manual § 10.4 and 7 CFR §§ 273.9 and 273.10 - Code of Federal Regulations)

Information submitted at your hearing reveals that while -----'s former spouse was awarded one half of his retirement benefits, there are no provisions in SNAP policy to allow for this deduction from your gross income.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your June 2011 application for SNAP benefits.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Janet Alexander, ESW, WVDHHR

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

----- (Claimant) and ----- (Co-Claimant),

CLAIMANTS,

v.

ACTION NUMBER: 11-BOR-1526

**West Virginia Department of
Health and Human Resources (WVDHHR),**

RESPONDENT.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair for ----- and ----- . 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 August 22, 2011 on a timely appeal filed July 5, 2011.

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

III. PARTICIPANTS:

-----, Claimant

-----, Co-Claimant

Janet Alexander, Economic Services Worker (ESW) WVDHHR

Erin Nelson, ESW, WVDHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its decision to deny the Claimants' June 2011 application for SNAP benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 10.4 and Chapter 10, Appendix A.
7 CFR § 273.9 & 7 CFR § 273.10 - Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated 6/24/11
- D-2 WV Income Maintenance Manual, Chapter 10.4.C
- D-3 Retiree Account Statement, Statement effective date January 29, 2011

Claimant's Exhibits:

- C-1 Child Maintenance And Property Settlement Agreement – In The [REDACTED] Court Of [REDACTED] County, [REDACTED] First Judicial District, Cause No. [REDACTED]

VII. FINDINGS OF FACT:

- 1) On June 13, 2011, the Claimants completed an application for Supplemental Nutrition Assistance Program benefits, hereinafter SNAP, formerly known as Food Stamps.
- 2) On or about June 24, 2011, the Claimants were notified via a Notice of Decision (D-1) that their application for SNAP benefits was denied. Exhibit D-1 indicates that the Claimants income is too much for them to receive benefits. Page three of the notice letter indicates that that the gross monthly income limit for SNAP benefits is 1,579 and the Claimants' gross monthly income was determined to be \$1,829.
- 3) The Department submitted Exhibit D-3, [REDACTED] retirement statement, to show how the Claimants' gross monthly payment amount (\$1,829) was verified. The Department went on to acknowledge the Claimants' contention that [REDACTED] former spouse may receive one half (1/2) of his retirement benefit, however, because the Claimants exceed the gross income limit for a SNAP assistance group (AG) of two and, and neither are aged, blind or disabled, the Claimants are ineligible for SNAP benefits.

- 4) [REDACTED] acknowledged SNAP policy but stated that he pays taxes on \$914 (just over \$10,000) per year. He stated that his former spouse was entitled to one half of his military retirement because it is part of the benefits package and it was also part of the property settlement agreement (C-1). He stated that he understands how the policy is written but does not believe it to be fair.
- 5) Policy found in the West Virginia Income Maintenance Manual, Chapter 10.4.C, states that the process of determining eligibility and the amount of the benefit differs when an AG member is elderly or disabled. When at least one AG member is elderly, which is at least age 60, or disabled as specified in Section 12.15.B, eligibility is determined by comparing the countable income to the maximum net monthly income found in Appendix A. There is no gross income test. Policy goes on to state, when no AG member is elderly or disabled, the gross income must be equal to or less than the gross income limit in Appendix A. If so, the AG qualifies for the disregards and deductions in Section 10.4.B. If the gross income exceeds the amount in Appendix A, the AG is ineligible. A review of Chapter 10, Appendix A, reveals that the maximum gross monthly income allowed for an AG of 2 is \$1,579 (130% of the Federal Poverty Level).

VIII. CONCLUSIONS OF LAW:

- 1) The regulations that govern SNAP benefits state that when there are no AG members who are elderly or disabled, the gross income must be equal to or less than the gross income limit in Appendix A. If the gross income exceeds the amount in Appendix A, the AG is ineligible. For an AG of 2, the gross monthly income cannot exceed \$1,579
- 2) Policy provides that the only time the gross income limit can be exceeded (and the eligibility determination process continued) is when at least one AG member is elderly or disabled. Evidence received at the hearing confirms that the Claimants fail to qualify under this provision.
- 3) Whereas there are no provisions in policy that take into account the Claimants' circumstance, and gross income must be counted toward SNAP eligibility, the Department was correct in denying the Claimants' application for SNAP benefits based on excessive gross income.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying the Claimant's application for SNAP benefits June 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of August, 2011.

**Thomas E. Arnett
State Hearing Officer**