



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

May 3, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 28, 2011. Your hearing request was based on the Department of Health and Human Resources' reduction of SNAP benefits due to a reduction in countable deductions.

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 is based on current policy and regulations. Some of these regulations state that a deduction is allowed for legally obligated child support actually paid, and when the client claims expenses for his home as a self-employment expense, the deduction can be either a shelter deduction or a cost of doing business, but the total deduction given must not exceed the actual expense (West Virginia Income Maintenance Manual, Chapter 10.4.B.4; 10.4.B.7).

The information submitted at your hearing revealed that the Department correctly determined your child support deduction and counted your shelter deduction as a cost of doing business, based on your income tax records.

It is the decision of the State Hearing Officer to **uphold** the Department action to reduce your SNAP benefits.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Amy Rizer, Department Representative

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

-----,

Claimant,

v.

Action Number: 11-BOR-585

**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 May 3, 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 April 28, 2011, on a timely appeal, filed December 27, 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.

III. PARTICIPANTS:

-----, Claimant
-----, Claimant's witness
Amy Rizer, 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. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct to reduce the Claimant's SNAP benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 10.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 West Virginia Income Maintenance Manual, Chapter 10.4.B
- D-2 Child support verification
- D-3 Food Stamp Allotment Determination screen prints
- D-4 Case Comments screen print
- D-5 West Virginia Income Maintenance Manual, Chapter 10.4.B.7
- D-6 E-mail message

Claimant's Exhibits:

- C-1 Notification of SNAP reduction dated December 17, 2010
- C-2 Statement of Child Support Obligation dated December 11, 2010; Statement of Child Support Obligation dated July 12, 2008

VII. FINDINGS OF FACT:

- 1) Amy Rizer, representative for the Department, testified that the Claimant completed a review of eligibility for Supplemental Nutrition Assistance Program (SNAP) benefits on December 14, 2010. At this review, the Claimant reported a child support deduction of \$5.00 per month. Ms. Rizer testified that the Claimant's wife has a business, and the shelter and utility costs are applied as a cost of doing business as opposed to a shelter and utility deduction. On or about December 17, 2010, the Department mailed notification (Exhibit C-1) to the Claimant, advising him that his monthly benefit amount would be \$52.00, which, according to the testimony of Ms. Rizer, the Claimant, and the Claimant's witness – his wife – was a reduction from the previous benefit amount.

- 2) The Claimant testified that he did report a \$5.00 monthly child support deduction, based on what he thought he could pay throughout the certification period. The Department presented child support verification (Exhibit D-2) that there had been no child support payments since July 23, 2010.

3) The Claimant testified that shelter and utility costs were not considered in their SNAP calculation. The Claimant and his wife testified that, for tax purposes, they did apply all of their shelter and utility costs as a business cost in the previous tax year, 2009. At their December 2010 SNAP review the Claimant indicated his intention to reduce the proportion of their shelter and utility costs used as a business cost, but he had not filed taxes for the tax year 2010. He testified that he filed his taxes in April 2011, after his SNAP review.

4) The West Virginia Income Maintenance Manual, Chapter 10.4.B.4, discusses the SNAP child support deduction as follows, in pertinent part:

A deduction is allowed for legally obligated child support actually paid by an AG member or disqualified individual to an individual not residing in the same household.

In West Virginia, legally obligated means the child support is the result of a circuit or magistrate court order, an order issued by administrative process, or a legally enforceable separation agreement. For orders issued in other states, any order that would be upheld by a Judge in a court of law is considered legally obligated.

Legally obligated child support includes cash or in-kind payments, payments on arrearage and payment for medical insurance premiums to cover the dependent child. If the dependent child is included in the parent's medical coverage at no extra cost, no deduction is allowed. If the parent must also enroll in order to cover the child, the total premium amount is used as a deduction. Alimony, spousal support and payments made in accordance with a property settlement are not deducted.

A deduction is allowed based only on payments actually made, not the legally obligated amount, and may not exceed the legal obligation.

5) At Chapter 10.4.B.7, the West Virginia Income Maintenance Manual states, as follows, in pertinent part:

NOTE: When the client claims expenses for his home as a self-employment expense, the deduction can be either a shelter deduction or a cost of doing business, but the total deduction given must not exceed the actual expense.

VIII. CONCLUSIONS OF LAW:

- 1) SNAP policy allows certain income deductions and disregards in the determination of the countable income that is the basis of the benefit level. The child support deduction is based on payments actually made and must not exceed the legal obligation. Testimony and evidence clearly showed that the child support deduction should not have been higher than the \$5.00 amount reported by the Claimant in his December 2010 review.

- 2) There is self-employment income in the Claimant's assistance group, and SNAP policy allows the Claimant's shelter and utility costs to either be a cost of doing business in the determination of self-employment income, or a SNAP income deduction. Department testimony indicated that it was applied as a cost of doing business for purposes of determining self-employment income. Applying this treatment based on tax records is reasonable approach, and the consideration of tax records only subsequent to filing is additionally reasonable. The Department's treatment of the shelter and utility costs in the Claimant's household is correct.

- 3) With the two disputed income deductions determined to be correct, the Department's calculation of countable income – and the resulting determination of the Claimant's SNAP benefit level – is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to reduce SNAP benefits to the Claimant due to a change in countable income.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of May, 2011.

**Todd Thornton
State Hearing Officer**