



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

May 26, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 19, 2011. Your hearing request was based on the Department of Health and Human Resources' action to terminate your SNAP benefits due to household composition.

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 SNAP are based on current policy and regulations. One of these regulations states that all individuals who both live together and purchase and prepare meals together must be included in the same assistance group (AG). Spouses who live together must be included in the same AG regardless of whether they purchase and prepare meals together. (West Virginia Income Maintenance Manual Section 9.1.A)

The totality of the information submitted at your hearing supports that your husband lives in your household, and as a result, you are not eligible for SNAP benefits.

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

Sincerely,

Cheryl Henson, State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Tera Pendleton, [REDACTED] DHHR

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

-----,

Claimant,

v.

Action Number: 11-BOR-928

**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 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 May 19, 2011 on a timely appeal filed April 11, 2011.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (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 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

Tera Pendleton, Department representative
Tammy Drumheller, Department witness

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to add the Claimant's husband to her case and then terminate her SNAP benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual §9.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case comments from Department's computer system dated from January 13, 2011 Through March 28, 2011
- D-2 Notification letter date March 1, 2011
- D-3 Verification of marriage from online computer source IPACT, employment verification, utility bill, various computer screen prints from Department's computer system

Claimant's Exhibits:

- C-1 Three (3) signed witness statements

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving SNAP benefits when on or about March 1, 2011 the Department notified her (D-2) that her SNAP benefits would terminate after March 2011 because her income had increased and was now more than the gross income limit for her to receive benefits. The notification letter informed her that her husband, -----, was included in the computations of her eligibility for SNAP.
- 2) Tammy Drumheller is an employee with the West Virginia Department of Health and Human Resources' [REDACTED] County office, and she functions there as a Front-End Fraud Unit (FEFU) investigator. She testified that she received an allegation regarding the Claimant's case on January 13, 2011; specifically, that it was alleged that the Claimant's husband was living in her household. She added that, because of the allegation, she conducted an investigation in order to determine whether ----- was living in the Claimant's household.
- 3) Ms. Drumheller testified that she spoke to a neighbor who lives "in front of the Claimant's house" on February 7, 2011, and that the neighbor stated that she lives on [REDACTED] Drive, and that she knows that the Claimant and ----- are married and have lived at their [REDACTED]

- 4) Ms. Drumheller stated that she verified (D-3), by researching an online database verification system, IPACT, that ----- and ----- were married in [REDACTED] County, West Virginia on July 31, 2010. She stated that she also verified that ----- is employed with the [REDACTED] and that he reported to the company that he lives at the same address as the Claimant's reported address.
- 5) Additional evidence (D-3) shows that the Claimant contacted the Department on March 18, 2011 and reported that ----- has not lived in her home since "Jan."
- 6) Additional evidence (D-3) shows that ----- reported to the West Virginia Department of Motor Vehicles on April 15, 2009 when renewing his driver's license that his address was the same as the Claimant's reported address.
- 7) Additional evidence (D-3) shows that ----- registered a vehicle with the West Virginia Department of Motor Vehicles on August 13, 2008 and again reported the Claimant's residential address as his own.
- 8) Additional evidence (D-3) shows that both the Claimant and ----- are listed as responsible account owners on a utility account with Appalachian Power Company. The evidence is in the form of a May 2011 usage bill from the company.
- 9) The Claimant contends that ----- left her household during January 2011 due to a domestic violence situation. She stated that the "911" emergency support system was contacted, but she does not remember the date of the incident. She added that there was no restraining order issued; however, ----- has been staying with his grandfather in [REDACTED] West Virginia, since he left her home.

The Claimant stated that ----- stays at her home two (2) or three (3) nights per week and sometimes shares meals with her. She stated that ----- goes to his grandfather's home after work daily, and after showering and changing clothes there, he comes to her home to visit "with us, and then, you know, if he stays he stays, and if he doesn't, he doesn't." She stated that she would rather "have him back home", but that they just can't work things out. She stated that ----- was not in her home when she applied for SNAP on January 13, 2011.

The Claimant testified that although she married ----- in July 2010, she did not report it to the Department in January 2011 because "I planned on trying to get an annulment, or divorce". She acknowledged that ----- lived in her home from July 2010 until sometime in January 2011; however, she testified that she has been "off the system since 2005", and added that January 2011 was the first time she has applied for benefits since the marriage. She stated that she did not change her last name to [REDACTED] after marrying -----.

- 10) Evidence presented by the Claimant (C-1) consists of three (3) signed witness statements, in which the authors attest that they are agreeing that they are a frequent visitor in the Claimant's household, and that they are willing to appear and testify in a Court of Law that they are giving accurate information. They further attest that only the Claimant and her two (2) children live in the Claimant's home. The statements are signed and dated March 22, 2011, and provide the author's address and telephone number. One of the authors lists an address in North Carolina; however, the Claimant states she visits her often.
- 11) Testimony was provided from -----'s grandfather, -----, by telephone. ----- is eighty-three (83) years of age. He testified that he does not know -----'s address in [REDACTED] West Virginia. He stated that ----- stays with him "when he wants to". He added that ----- is his caregiver, and takes him to the doctor when he needs to go, "but he don't stay here". He stated that ----- stayed with him before he married the Claimant. He stated that ----- is married and that he stays with his wife, and then he "checks on me". When asked how often ----- stays with him, he stated that "he don't stay on a permanent basis". He stated that ----- was his grandson and that he "has a home here whenever he wants it."
- 12) The Claimant questioned the testimony of ----- . She stated that he did not sound like himself; however, she is not aware of him having any mental issues that would cloud his memory or judgment. ----- appeared to have difficulty hearing at times during the testimony; however, his answers were clear and he appeared to be on topic.
- 13) The West Virginia Income Maintenance Manual §9.1 A states in pertinent part:

SNAP ELIGIBILITY DETERMINATION GROUPS

A. THE ASSISTANCE GROUP (AG)

1. Who Must be Included

The SNAP AG must include all eligible individuals who both live together and purchase and prepare their meals together.

The following shows the make-up of a SNAP AG.

b. Individuals or Groups of Individuals Living with Others

(1) Purchase and Prepare Together

A group of individuals who live together, and for whom food is customarily purchased and prepared together, is an AG.

Customarily is used to mean over 50% of meals on a monthly basis.

(2) Purchase and Prepare Separately

Individuals or groups of individuals living with others, but who customarily purchase food and prepare meals separately, are an AG.

EXCEPTION: The following individuals who live together must be in the same AG, even if they do not purchase and prepare meals together.

* Spouses are individuals who are married to each other under state law.

VIII. CONCLUSIONS OF LAW:

- 1) The question before the Board of Review is whether or not the evidence supports that the Claimant's husband, -----, lived with her at the time of its action to terminate the Claimant's SNAP eligibility in March 2011.
- 2) Policy provides that for SNAP, all individuals who both live together and customarily purchase and prepare meals together must be included in the same AG. Customarily is used to mean over 50% of meals on a monthly basis. Spouses who live together must be included in the same AG, regardless of whether they purchase and prepare meals separately.
- 3) Policy is clear in that if ----- is found to be living with the Claimant, he must be included in her SNAP case.
- 4) Relevant evidence supporting that ----- was living with the Claimant at and around the time of the Department's action includes written evidence from the Department of Motor Vehicles in West Virginia which shows that ----- is purporting himself to live at the same address as the Claimant for driver's license purposes as well as for vehicle registration. Testimony from Ms. Drumheller supports that in February 2011 a neighbor in the Claimant's neighborhood stated to her that ----- lives at the same address as the Claimant, that he has lived there for four (4) years, and that she knew the couple was married, having attended their wedding. The neighbor's comments support that she has a knowledgeable relationship with the Claimant and ----- . Testimony from the Claimant supports that ----- is usually at her home daily, and stays the night three (3) to four (4) nights per week, at times sharing meals with her family. Testimony from -----'s grandfather supports that ----- does not live with him, and merely visits his home regularly.
- 5) Relevant evidence supporting that ----- was not living with the Claimant at and around the time of the Department's action includes statements from the Claimant, and four (4) signed written statements, one of which was not corroborated by the author's testimony.
- 6) The totality of the evidence supports that ----- was living with the Claimant at and around the time of the Department's March 2011 action to terminate her SNAP eligibility. Although the Claimant stated that ----- does not live with her, the totality of the evidence suggests otherwise.
- 7) Therefore, the Department was correct in its decision to terminate the Claimant's SNAP benefits based on the information submitted during this hearing.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's action to terminate the Claimant's SNAP benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th Day of May, 2011.

**Cheryl Henson
State Hearing Officer**