



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
State Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704
January 5, 2005**

**Bob Wise
Governor**

**Paul L. Nusbaum
Secretary**

Dear Ms. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 3, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the Food Stamp Program due to excessive income.

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 determined based on current regulations. One of these regulations is to qualify for Food Stamps, gross monthly countable income must be less than the maximum gross monthly allowable income limit (WV Income Maintenance Manual Section 10.4 and Federal Regulations 273.9).

The information which was submitted at the hearing revealed that your gross countable monthly income of \$1426.76 exceeded the Food Stamp gross monthly income limit of \$1354 for a two (2) person Assistance Group (AG).

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your application for the Food Stamp Program due to excessive income.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Misti Broyles, Dept. Hearing Rep.

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: _____

ADDRESS: _____

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 3, 2005 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 originally convened on January 3, 2005 on timely appeal filed November 23, 2004.

It should be noted here that any benefits under the Food Stamp Program have been denied pending the hearing decision.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled Food Stamps is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

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 food coupons to households who meet eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS

1. _____, Claimant.
2. Misti Broyles, Dept. Hearing Rep.

Presiding at the hearing was Thomas M. Smith, 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 took the correct action to deny the application for the Food Stamp Program effective November, 2004 due to excessive income.

V. APPLICABLE POLICY

WV Income Maintenance Manual Section 10.3, 10.4, Chapter 10 App. A.
Federal Food Stamp Regulations Section 273.9, 273.10.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Exhibit #1 Copy of case comments (5 pages).

- “ #2 Copy of pay stubs (2 pages).
- “ #3 Copy of notification letter dated 11-18-04 (3 pages).
- “ #4 Copy of regulations (58 pages).

VII. FINDINGS OF FACTS

1. The claimant was an active recipient of Food Stamps when her case was due for redetermination in November, 2004 and an application for a new certification period was made on 11-8-04 (Exhibit #1).
2. The application was pended for verification of income which was received on 11-17-04 and the gross amount of earnings from two (2) pays stubs dated 10-15-04 and 10-29-04 were used and the gross amounts of \$669.90 and \$657.30 were combined (totaling \$1327.20) and divided by two (2) (\$663.60) and then were multiplied by 2.15 as the claimant was paid biweekly and the total countable gross monthly income amounted to \$1426.74 (Exhibits #1 and #2).
3. The application was denied as the countable gross monthly income of \$1426.74 exceeded the maximum allowable income limit of \$1354 for a two (2) person assistance group (AG).
4. Notification was issued on 11-18-04 (Exhibit #3) that the application for Food Stamps was denied due to excessive income.
5. Ms. Broyles testified that she used the sick pay, vacation pay, and holiday pay in determining countable gross income.
6. Ms. _____ testified that she did not understand why no deductions were given.
7. Ms. _____ testified that she is being penalized for working more hours.
7. Ms. Broyles testified that Ms. _____ has to meet the gross income test as there is no one in her household who is elderly or disabled.

CONCLUSIONS OF LAW

1. WV Income Maintenance Manual Section 10.4 C states, in part:

"Determining Eligibility and Benefit Level

The following information describes situations encountered in determining eligibility for most benefits groups. However, there are situations which require special treatment. See Section 10.4, D.

The process of determining eligibility and the amount of the benefit differs when a benefit group member is elderly or disabled.

1. Determining Eligibility

- When at least one benefit group member is elderly or disabled, eligibility is determined by comparing the countable income to the maximum net monthly income found in Appendix A. There is no gross income test.
- When no benefit group 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 benefit group qualifies for the disregards and deductions in Section 10.4, B. If the gross income exceeds the amount in Appendix A, the benefit group is ineligible.

EXCEPTION: When the benefit group is Categorically Eligible as defined in Chapter 1, the gross income test is presumed to be met.

NOTE: The C-219 system does not perform the gross income test.

2. Determining Countable Income

The following steps are used to determine countable income for cases meeting eligibility tests in item 1 above.

Step 1: Combine monthly gross non-excluded earnings and monthly gross profit from self-employment.

Step 2: Deduct 20% of Step 1.

Step 3: Add the gross non-excluded unearned income

Step 4: Subtract the Standard Deduction found in App. B.

Step 5: Subtract the Homeless Shelter Standard Deduction.

Step 6: Subtract allowable medical expenses in excess of \$35.00.

Step 7: Subtract the Dependent Care Deduction up to the maximum found in App. B.

Step 8: Subtract the amount of legally obligated child support actually paid.

Step 9: Calculate 50% of the remaining income and compare it to the actual monthly shelter/utility cost or shelter/SUA amount.

Step 10: The amount in excess of 50% is deducted to arrive at countable income.

Step 11: Compare the countable income to the maximum net income in Appendix A for the benefit group size. This net income test does not apply to Categorically Eligible benefit groups.

3. To determine the coupon allotment, find the income and the number in the benefit group in App. D."

2. WV Income Maintenance Manual Chapter 10, Appendix A states, in part:

"Appendix A - Income Limits

Number of Persons	Food Stamp Gross/Net Test
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2	Gross - \$1354 Net - \$1041"
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VIII. DECISION.

Based on the evidence and testimony presented in the hearing, it is the decision of the State Hearing Officer that the Department has taken the correct action to deny the application for the Food Stamp Program effective November, 2004. The claimant's Food Stamp case was due for recertification in November, 2004 and the pay stubs provided by the claimant from the month of October, 2004 were used to determine countable income. The Department correctly calculated the gross countable income to be \$1426.74 and correctly determined that the claimant's gross countable income must be under the gross income limit of \$1354 prior to any deductions being allowed. Since the gross AG income of \$1426.74 exceeded the gross Food Stamp income limit of \$1354 for a two (2) person AG, the claimant is not eligible for the Food Stamp Program.

Therefore, the State Hearing Officer must uphold the action of the Department to deny the application for the Food Stamp Program effective November, 2004.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.