



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

**Joe Manchin III
Governor**

March 9, 2005

Dear Ms. _____;

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 21, 2005. Your request was based on the Department of Health and Human Resources' action to close your Food Stamp Benefits because you were approved in error.

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 Food Stamps are determined based on current regulations. One of these regulations states in part,

"Parents living with their natural or adoptive children or stepchildren who are under 22 years of age and such children living with such parents are assumed to purchase and prepare their food together and, therefore, must be in the same AG. (WVIMM 9.1 (A) (1) (c) (3) FOOD STAMP ELIGIBILITY GROUPS – EXCEPTIONS)

The information submitted at the hearing revealed: You were not eligible for Food Stamp Benefits. A peer review of the application discovered that you were under 22 years of age and living with a parent. The Department made a mistake in approving the application.

It is the decision of the State Hearing Officer, to uphold the action of the Department to close Ms. _____' Food Stamp Benefits.

Sincerely,

Ray B. Woods, Jr., M. L. S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Kent Wakefield, ESW

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 March 9, 2005, for Ms. _____.

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 scheduled on September 16, 2004, on a timely appeal filed September 2, 2004. The hearing was rescheduled at the request of the State Hearing Officer for September 23, 2004. The State Hearing Officer rescheduled the hearing due to a family emergency. The Claimant requested to reschedule the hearing for September 23, 2004 and November 18, 2004. The hearing finally convened on January 21, 2005.

It should be noted here that, Ms. _____' Food Stamp Benefits were closed prior to the fair hearing process.

All persons giving testimony were placed under oath. A pre-hearing conference could not resolve the matter between the parties.

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 the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS

_____, Claimant

Kent Wakefield, Income Maintenance Worker - [REDACTED] District DHHR Office

Presiding at the hearing was, Ray B. Woods, Jr., M. L. S., State Hearing Officer and, a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

Did the Department properly determine that Ms. _____ was ineligible to receive Food Stamp Benefits?

V. APPLICABLE POLICY

West Virginia Income Maintenance Chapter 9.1 (A) (1) (c) (3) FOOD STAMP ELIGIBILITY GROUPS - EXCEPTIONS

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

- D-1 Initial application for pregnancy
- D-2 Application for Food Stamps
- D-3 Closure Letter NNCL for Food Stamps
- D-4 BVL4 Notice of Food Stamp over issuance
- D-5 Fair Hearing Request IM-FH-1
- D-6 WVIMM 9.1 (A) (1) (c) (3) FOOD STAMP ELIGIBILITY GROUPS - EXCEPTIONS
- D-7 Hearing Summary

VII. FINDINGS OF FACT

- Mr. Wakefield provided the following Hearing Summary:

We received an application for pregnancy on 03/30/04. Sent verification letter to client on 03/31/04 to verify if child support still received and the amount. Client came into office on 04/02/04 and verified child support ended on her 18th birthday. Client also requested to apply for food stamps. She was living with her mother but stated that they purchased and prepared their food separately. During this application I failed to go back and verify her current age. The food stamps passed.

A peer review of the application discovered that client was under 22 years of age and living with a parent. Policy states that she cannot be separate from a parent for food stamps. Client was sent a closure letter that stated this information and explained that her mother could be added to the case to determine if eligibility could continue. Received no response from client and food stamp case was closed.

Received request for a fair hearing from client on 08/25/04. Contacted client by phone on 08/27/04 and scheduled pre-hearing conference for 3:00 on 08/30/04. I explained the policy and provided her a copy of the manual section. She stated she was unemployed and didn't know how she would pay it back. I apologized for the error and explained she could contact the repayment officer. She then stated she had contacted him and felt that he was rude and that was why she asked for the fair hearing. I explained that he would work with her the best he could if she would be calm and explain her situation. She then initialed the form to show she wanted a fair-hearing and said she would call and cancel if ok after phone conversation with repayment officer.

- Ms. _____ did not have any questions for Mr. Wakefield. She is currently receiving West Virginia WORKS Benefits. Ms. _____ expressed her disappointment with the Department's actions.
- The decision was given at the conclusion of the fair hearing.

VIII. CONCLUSIONS OF LAW

West Virginia Income Maintenance Manual Section 9.1 (A)) (1) (c) (3) FOOD STAMP ELIGIBILITY GROUPS – EXCEPTIONS states in part,

The following individuals living with others, or groups of individuals living together, must be considered as customarily purchasing food and preparing meals together, i.e., being in the same AG, even if they do not do so. Two of the following groups show exceptions to the general rule of being in the same AG.

(1) Spouses

For these purposes, spouse means individuals:

- Who are married to each other under state law; or
- Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors or tradespeople.

Spouses must be in the same AG. There are no exceptions.

(2) Children Under Age 18, Not Living With a Parent

Children, under age 18, who are under the parental control of an adult AG member who is not a parent, and the member who exercises parental control, are assumed to purchase and prepare their food together and, therefore, must be in the same AG.

(3) Children Under Age 22, Living With a Parent

Parents living with their natural or adoptive children or stepchildren who are under 22 years of age and such children living with such parents are assumed to purchase and prepare their food together and, therefore, must be in the same AG.

(4) Elderly and Disabled Individuals

Although a group of individuals living together and purchasing food and preparing meals together constitutes a single AG under item b,(1) above, an individual who meets all of the following criteria may have himself, his spouse and children considered a separate Food Stamp AG

He is:

- At least 60 years old; and

- Is unable to purchase and prepare meals. He must be unable to purchase and prepare meals because he suffers from a disability listed below, or suffers from some other severe, permanent physical or mental disease or non-disease-related disability.
 - Permanent loss of use of both hands, both feet or one hand and one foot.
 - Amputation of leg at hip.
 - Amputation of leg or foot because of diabetes mellitus or peripheral vascular diseases.
 - Total deafness, not correctable by surgery or hearing aid.
 - Statutory blindness, except if due to cataracts or detached retina.
 - Spinal cord or nerve root lesions resulting in paraplegia or quadriplegia.
 - Multiple sclerosis in which there is damage of the nervous system because of scattered areas of inflammation which recurs and has progressed to varied interference with the function of the nervous system, including severe muscle weakness, paralysis and vision and speech defects.
 - Muscular dystrophy with irreversible wasting of the muscles with a significant effect on the ability to use the arms and/or legs.
 - Impaired renal function due to chronic renal disease, documented by persistent adverse objective findings, resulting in severely reduced function which may require dialysis or kidney transplant.
 - Amputation of a limb, current age 55 or older and
- The gross non-excluded income of the others with whom the individual resides, excluding the individual's own income and the income of his spouse and children, cannot exceed the amount shown in the E & D column of Appendix A of Chapter 10. The individual, his spouse and children are not included in the total count of those residing together, when comparing gross non-excluded income to the amount in column E & D. Only income, not normally excluded from consideration for the Food Stamp Program, is used to determine the gross income compared to the E & D column amount.
- The individual, who meets these three requirements, his spouse and children may be a separate AG, even if living and eating with others.

IX. DECISION

It is the decision of this State Hearing Officer to UPHOLD the action of the Department to close the Food Stamp case. Mr. Wakefield approved the case in error and corrected the case

during a peer review. Ms. _____ was not eligible for Food Stamp Benefits for the months of April 2004 through June 2004.

The Department's action was proper and correct in this particular matter.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.