



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 12, 2005

Dear Mr. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 6, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue Food Stamp benefits due to excessive countable income which includes a Striker's prior 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 for the Food Stamp Program is based on current policy and regulations. Some of these regulations state as follows: Current eligibility is determined as for any other Assistance Group, except as it relates to the amount of the striker's income to count. The higher of the striker's pre-strike income or his current income is the income which must be counted.

The information which was submitted at the hearing revealed that the Agency was correct in their action to count your pre-strike income and to propose closure of your Food Stamp case due to excessive countable income.

It is the decision of the State Hearing Officer to **uphold** the Agency's actions to close your Food Stamp case.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
DHHR, Donna Ice

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

April 12, 2005

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 6, 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 convened on a timely appeal filed February 25, 2005.

It should be noted here that benefits under the Food Stamp program has been continued through this hearing process.

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 stamp 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

Donna Ice, Agency Representative

Presiding at the hearing was Sharon Yoho, 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 Agency was correct in their proposal to close the Food Stamp case due to excessive countable income.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual ' 10.4; & ' 20.2.
7 CFR ' 273.18 - Code of Federal Regulations.

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VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Exhibit -D-1 Food Stamp closure letter dated February 15, 2005
Exhibit -D-2 Request for a pre-hearing conference dated February 21, 2005
Exhibit -D-3 Pre-hearing appointment letter dated February 25, 2005
Exhibit -D-4 Request for a hearing dated March 5, 2005
Exhibit -D-5 Income Maintenance Policy, 10.4-9
Exhibit -D-6 Income Maintenance Policy, Appendix A

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Mr. _____ who was a current recipient of Food Stamp benefits made a visit to the Agency to inquire about other programs which he might be eligible for due to being on strike from his employment at _____. He reported that both he and his wife had been hired by _____. He also reported that he was a full time college student.
- (2) The claimant provided income verification from _____ on January 14, 2005. Since Mr. _____ was employed at least 20 hrs. per week, his full time student status did not make him ineligible to be included in the food stamps. It was determined also that since the household had been active for Food Stamp benefits prior to the strike that the status of being on strike from his employment would not cause the household to be ineligible for Food Stamps at this time.
- (3) The countable income after Mr. and Mrs. _____ began employment at _____ was determined to be excessive for receiving Food Stamp benefits. A striker's pre-strike income must be counted instead of his current income, if the pre-strike income is the greater of the two. When the Agency added Mr. _____'s pre-strike income with Mrs. _____'s current income from Regis they reached a total gross income of \$3517. The allowable gross income for their household of six was \$2732.
- (4) The claimant's Food Stamps were proposed to be closed due to excessive countable income.
- (5) Mr. _____ has not resigned from his employment from _____. The company had not disallowed him to return to his old job nor did they instead offer him a different one. The Agency therefore identified him as a striker.
- (6) West Virginia Income Maintenance Manual ' 10.4 – 9:
This section contains policy relating to the treatment of strikers. When the Food Stamp AG includes an individual who is on strike, the AG is ineligible for the duration of the strike unless:
 - The AG was eligible for or receiving benefits the day prior to the strike; or
 - The individual who is participating in the strike is exempt from work requirements for any reason other than employment.
 - a. A striker is an individual involved in a strike or concerted work stoppage by employees, or any slowdown or concerted interruption of operation by employees.

An individual who is a part of the striking union or concerted work stoppage is considered a striker, even if he voted against the strike or concerted work stoppage.

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If the company does not allow the strikers to return to their old jobs, but offers them different ones, the striker provisions no longer apply.

VII. Section Continued:

- b.** If the AG was eligible and receiving Food Stamps the day prior to the strike, pre-strike eligibility is assumed. If not, it is necessary to determine if the AG would have been eligible the day prior to the strike, had they applied.
- c.** Current eligibility is determined as for any other AG, except as it relates to the amount of the striker's income to count. The amount is determined as follows:
 - Determine what the striker's monthly non-excluded income would have been, if he had applied the day prior to the strike, and, if the strike had not occurred.
 - Determine the striker's current monthly non-excluded income.

The higher of these two amounts is counted as the striker's income.

- (7) West Virginia Income Maintenance Manual Appendix A:
Food Stamp Gross/Net Test - Number of Persons (6) – Gross \$2732.

VIII. DECISION:

Policy reveals that Food Stamp eligibility for a household including a striker is determined based on what their eligible status was or would have been prior to the day of strike. If found to be eligible for consideration, the countable earnings of the striker must be the greater of his pre-strike earnings and his current earnings.

Testimony of both the claimant and the Agency representative clearly concludes that Mr. _____ must be considered a striker for Food Stamp purposes. While eligible based on his pre-strike earnings, once his wife's new earnings were added to his pre-strike earnings, their countable income exceeded the maximum allowable for the Food Stamp program.

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **uphold** the Agency's action to close the Food Stamp case.

IX. RIGHT OF APPEAL

See Attachment

X. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29