



**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**

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

July 8, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 6, 2005. Your hearing request was based on the Department of Health and Human Resources' action to determine your Food Stamp allotment for May, 2005 to be \$150.

In arriving at a decision, the State Hearings 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: the change must be effective no later than the month following the month the change is reported (WV Income Maintenance Manual Section 2.2 C and Federal Regulations Section 273.12).

The information which was submitted at your hearing revealed that you were correctly determined to be eligible for \$150 in Food Stamps for the month of May, 2005.

It is the decision of the State Hearings Officer to uphold the action of the Department to determine your Food Stamp allotment for May, 2005 to be \$150.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
David Napier, Dept. Hearing Rep.

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

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**Claimant,**

**v. Action Number:**

**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 July 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 July 6, 2005 on a timely appeal, filed May 17, 2005.

It should be noted here that the claimant's benefits were approved been continued pending a hearing decision. It should also be noted that the hearing was originally scheduled for June 27, 2005 but was rescheduled as a telephone conference hearing at claimant's request.

## II. PROGRAM PURPOSE:

The Program entitled Food Stamp Program is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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 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:**

1. \_\_\_\_\_, Claimant.
2. David Napier, Dept. Hearing Rep.

Presiding at the Hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the Department determined the correct amount of Food Stamps for the month of May, 2005.

### **V. APPLICABLE POLICY:**

WV Income Maintenance Manual Section 2.2 C  
Federal Food Stamp Regulations Sections 273.9, 273.12.

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

- D-1 Copy of notification letter dated 5-5-05 ((3 pages).
- D-2 Copy of case comments dated 5-4-05.
- D-3 Copy of pay stub dated 3-31-05.
- D-4 Copy of notification letter dated 5-10-05.
- D-5 Copy of WV Income Maintenance Manual Section 2.2 C.

#### **Claimants' Exhibits:**

- C-1 Copy of letter from \_\_\_\_\_ dated 5-3-05.

### **VII. FINDINGS OF FACT:**

- 1) The claimant made an application for Food Stamps and Medicaid on 5-4-05 and reported working 40 hours per week at \$5.50 per hour and the Food Stamp application was approved based on gross monthly income of \$1486 and countable net Food Stamp income of \$1162.80 for a Food Stamp allotment of \$150 for a four (4) person assistance group.
- 2) The claimant reported on 5-5-05 that she was no longer working and requested that the Food Stamps for the month of May, 2005 be increased but the change to increase the Food Stamp allotment to \$395 was made effective the following month (June, 2005) and the claimant submitted a hearing request which was received on 5-17-05.
- 3) Mr. Napier testified that a change in Food Stamps due to a decrease in income of \$50 or more must be made effective no later than the month following the month in which the change is reported.

- 4) The claimant testified that she was not working as her hours had been taken away and that the caseworker was counting \$1,000 income in May, 2005 which she did not have.
- 5) The claimant testified that she would provide a letter showing she was not working and Mr. Napier testified that he would not object to the document being entered as evidence even though the hearing appointment letter mailed on June 27, 2005 instructed both parties to provide a copy of evidence by July 1, 2005 and the State Hearing Officer agreed to allow the claimant the opportunity to provide the document on the day of the hearing. The State Hearing Officer received a copy of a letter from \_\_\_\_\_ dated 5-3-05 (marked as Exhibit #C-1) which was a Child Care Parent Notification Letter Notice of Denial or Closure which stated that the claimant was no longer eligible for child care services as employment could not be verified, that \_\_\_\_\_ from \_\_\_\_\_ informed Ms. \_\_\_\_\_ that the claimant's last day of work was 3-23-05, and that \_\_\_\_\_ with \_\_\_\_\_ stated that the claimant had not been employed anywhere else. The letter was not from the claimant's employer and was a hearsay document from a third party which did not verify the claimant's actual employment status at the time of application (5-4-05).
- 6) WV Income Maintenance Manual Section 2.2 states, in part:

“B. 3 Timely Report and Follow-Up

To determine if a claim must be established or a lost benefit restored, a decision must be made as to whether or not a change was reported in a timely manner.....

Reported changes are not effective the month they are reported. See item C below to determine when a reported change is effective.....

C. AGENCY TIME LIMITS

1. Increase In Benefits

a. Addition of an AG Member or a Decrease in Income of \$50 or More

The change must be effective no later than the month following the month in which the change is reported. When the change is reported after the data system deadline, supplemental benefits must be issued and received by the 10<sup>th</sup> of the following month or by the AG's usual issuance cycle in that month, whichever is later. The supplemental benefits are issued based upon the date the information is reported, regardless of whether or not the report is timely. Supplemental benefits issued in this situation are not considered restored benefits as described in item E, 1 below.

b. All Other Changes

For all other changes which result in an increase in benefits, except for those described in item a above, changes are made as follows.

- If the next issuance is more than 10 days after the date the change is reported, the change is effective the month following the report month.

- If the next issuance date is within 10 days of the date the change is reported, the change is effective 2 months after the report month.”

#### **VIII. CONCLUSIONS OF LAW:**

- 1) WV Income Maintenance Manual Section 2.2 C, 1, states that a reported decrease in income of \$50 or more which results in an increase in benefits must be effective no later than the month following the month in which the change is reported. The claimant reported on 5-4-05 that she was employed 40 hours per week at \$5.50 per hour and her Food Stamp allotment was based on her reported earnings. The claimant reported the next day (5-5-05) that she was no longer working and the change was properly made to increase Food Stamps the month following the month in which the change was made (June, 2005). The claimant was not entitled to an increase in Food Stamp benefits for the month of May, 2005 as her case was based on the information reported on 5-4-05 during the application. The letter provided by the claimant as evidence that she was not employed at the time of application (Exhibit #C-1) was not from her employer and the claimant did not dispute the Department’s testimony that she reported being employed 40 hours per week at \$5.50 per hour on the day of the application.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the action of the Department to determine that the claimant was eligible for \$150 in Food Stamps for the month of May, 2005.

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 8th Day of July, 2005.**

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**Thomas M. Smith**  
**State Hearing Officer**