



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 28, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 8, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for Food Stamp benefits based on excessive assets.

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 that the asset limit for the Food Stamp Program is \$3,000 when at least (1) person in the assistance group (AG) is age 60 or over. (West Virginia Income Maintenance Manual ' 11.3 and 7 CFR 273.8- Code of Federal Regulations)

The information which was submitted at your hearing reveals that your assets do not exceed the maximum allowable asset limit for participation in the Food Stamp Program.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in closing your Food Stamp benefits. Food Stamp benefits should be reinstated to the appropriate level retroactive to June 1, 2005.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Lisa Heater, ESW, DHHR

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

_____,
Claimant,

v.

Action Number: 05-BOR-6163

**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 September 28, 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 September 8, 2005 on a timely appeal filed July 11, 2005.

II. PROGRAM PURPOSE:

The Food Stamp and Medicaid 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:

_____, Claimant
Lisa Heater ESW, DHHR

Presiding at the Hearing was Thomas E. Arnett, 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 was correct in their action to deny the Claimant's application for Food Stamp benefits based on excessive assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 11.3 & 11.4
7 CFR 273.8-Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHHR-1 Food Stamp Closure Letter, dated 5/26/05
DHHR-2 Real Property Assets – valued at \$3833
DHHR-3 Income Maintenance Policy Manual 11.3
DHHR-4 Income Maintenance Policy Manual 11.4.CC.1

Claimant's Exhibits:

C-1 State of West Virginia Property Record Card (Valuation Date 7-01-0084,
Reviewed 09-17-2003)
C-2 Correspondence from the Office of Sheriff and Treasurer of [REDACTED] County dated
8/11/05.

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing a reevaluation to determine continued eligibility for participation in the Food Stamp Program.
- 2) On May 26, 2005, the Department sent the Claimant a Notice of Decision (DHHR-1) that includes some of the following pertinent information:

Action: You Food Stamps will stop. You will not receive this benefit after June 2005.

Reason: The amount of assets is more than is allowed for this benefit.

- 3) Testimony received from the Department reveals the Claimant owns a parcel of land that is assessed separately from the tract of land that her home is on. This real estate is valued at \$3,833 (DHHR-2) and is based on the assessed value included in exhibit C-2. This tract of land is adjacent to the Claimant's home but is on the other side of the road. The Department has determined that this parcel of land is non-homestead property that cannot be excluded and therefore must count as an asset. As a result, the Department closed the Claimant's Food Stamp benefits effective June 1, 2005, based on excessive assets.

- 4) West Virginia Income Maintenance Manual, Chapter 11.3, reveals that the maximum allowable asset limit for Food Stamp benefits is \$3000 when at least one AG member is age 60.
- 5) West Virginia Income Maintenance Manual, Chapter 11.4.CC.1 (Homestead Property) states that the client's homestead is the property on which he lives and which is owned, or is being purchased by him. It is the dwelling and the land on which the dwelling rests, which is not separated by intervening property owned by others. Public rights-of-way which run through the surrounding property and separate it from the home do not affect this exclusion. Any additional property acquired and not separated from the original acquisition by intervening property owned by others, is also excluded.

VIII. CONCLUSIONS OF LAW:

- 1) The maximum allowable asset limit for a Food Stamp benefits is \$3000 when at least one AG member is age 60.
- 2) The parcel of land located adjacent to the Claimant's home is exempt from being counted as an asset because it is not separated by intervening property owned by others. This tract of land is only separated from the Claimant's home by a public right-of-way, and this does not affect the exclusion. Further, policy goes on to say that "Any additional property acquired and not separated from the original acquisition by intervening property owned by others is also excluded."

IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **reverse** the Department's action to close the Claimant's Food Stamp benefits based on excessive assets. Food Stamp benefits should be reinstated to the appropriate level effective June 1, 2005.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of September, 2005.

Thomas E. Arnett
State Hearing Officer