



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 30, 2005

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 22, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Food Stamp benefits as a result of 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 for the Food Stamp Program is based on current policy and regulations. Some of these regulations state that eligibility for Food Stamps is based on a determination of countable household income and the number of individuals in the Food Stamp benefit group. (West Virginia Income Maintenance Manual Section 10.4 C & Appendix A)

Information submitted at the hearing revealed that your monthly income exceeds the maximum allowable amount for your Food Stamp Assistance Group.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your Food Stamp benefits.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Debbie Greathouse, ESW, DHHR

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

____,

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 September 30, 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 22, 2005 on a timely appeal filed July 25, 2005.

The Claimant's benefits have been continued pending the results of this hearing.

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 an EBT card to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

____, Claimant
Debbie Greathouse, ESW, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 Agency is correct in its proposal to terminate the Claimant's Food Stamp benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 10.3, 10.4 C and D and Chapter 10, Appendix A

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing request/Food Stamp termination letter dated July 14, 2005
- D-2 Income statement for [REDACTED]
- D-3 West Virginia Income Maintenance Manual Section 10.4, D, 4, b

Claimant's Exhibits

- C-1 Video lottery information
- C-2 [REDACTED] receipt

VII. FINDINGS OF FACT:

- 1) On May 15, 2005, the Claimant's active Food Stamp case was transferred from [REDACTED] County to [REDACTED] County.
- 2) The Claimant is self-employed as owner of [REDACTED] an establishment featuring video poker machines.
- 3) On June 14, 2005, a Food Stamp redetermination was completed and income verification revealed that "lottery expenses" of \$2,000 had been used as a monthly deduction from self-employment income for the months of April and May 2005 (D-2).
- 4) The Department contends that the \$2,000 listed as "lottery expense" is held for payouts to customers who win money from the video poker machines. Since the Claimant is reimbursed for money paid out of this fund, the Department determined that the \$2,000 can neither be counted as self-employment income or a self-employment deduction.
- 5) The Department removed the \$2,000 monthly deduction and the Food Stamp case was closed as household income was excessive for participation in the program.
- 6) The Claimant was sent a letter on July 14, 2005 (D-1) which states, in part:

Action: Your Food Stamps will stop. You will not receive these benefits after July 2005.

Reason: Income is too much for you to receive benefits. The income we count is too much for you to receive benefits. Income from self-employment has increased.

The Claimant's total gross household income as shown on the letter is \$2,462.80 and the net countable income is \$2,048.46. Four persons are listed in the Food Stamp Assistance Group.

- 7) The Claimant sets aside \$2,000 for lottery machine payouts which is reimbursed to her by the owner of the poker machines. The money is held in the lottery account and constantly "recycled," she stated. Any profit the Claimant earns from the machines is recorded under the sales portion of her income statement.
- 8) West Virginia Income Maintenance Manual Chapter 10.4 D, 4, b (D-3) states that gross profit from self-employment is the income remaining after deducting any identifiable costs of doing business from the gross income.

(1) Deductions

Examples of allowable deductions are:

- Employee labor costs
- Stock and supplies
- Raw material
- Seed
- Fertilizers
- Repair and maintenance of machinery and/or property
- Cost of rental space used for conducting the business
- Payments on the principal and interest of the purchase price of income-producing real estate and capital assets, equipment, machinery and other durable goods
- Insurance premiums and taxes paid on the business and income-producing property
- The principal, interest and taxes on the client's residence which is used in part to produce income. This is applicable only if the costs on the portion of the home used in the self-employment enterprise can be identified separately
- Advertising costs
- Utilities
- Office expenses (stamps, stationery, etc.)
- Legal costs

- Net loss from self-employment farming
Do not deduct the following:

- Federal, state or local income taxes
- Money set aside for retirement
- Travel from home to a fixed place of business and return
- Depreciation
- Amounts claimed as a net loss, except loss from farming self-employment

- 9) West Virginia Income Maintenance Manual Chapter 10.3, FFF states that reimbursements for past or future expenses do not count as income for the Food Stamp Program as long as they do not exceed actual expenses or represent a gain or benefit to the income group.
- 10) West Virginia Income Maintenance Manual Chapter 10.4, 1 states that, in order to qualify for Food Stamps, countable gross income must be equal to or less than the gross income limit for the size of the Assistance Group listed in Appendix A when no Assistance Group member is elderly or disabled. When at least one Assistance Group member is elderly or disabled, eligibility is determined by comparing the countable income to the maximum net monthly income for the Assistance Group size found in Appendix A.
- 11) West Virginia Income Maintenance Manual Chapter 10, Appendix A lists the maximum gross income for a four-person Food Stamp assistance group as \$2,043 and the maximum allowable net income as \$1,571 as of July 2005.

VIII. CONCLUSIONS OF LAW:

- 1) The Claimant testified that she always receives reimbursement for money distributed to patrons from her lottery account.
- 2) Policy in Chapter 10.3, FFF of the Income Maintenance Manual dictates that reimbursements for expenses do not count as income for the Food Stamp Program as long as they do not represent a gain to the income group.
- 3) While the lottery reimbursements do not count as income, they, in turn, cannot be considered identifiable business costs as stipulated in Chapter 10.4 D, 4, b since the money is always reimbursed to the Claimant and no expense is incurred.
- 4) The Department has correctly applied policy in determining that lottery funds reimbursed to the Claimant cannot be considered a business expense.
- 5) The Claimant's gross countable household income of \$2,462.80 as listed on the July 14, 2005 Food Stamp termination letter exceeds the gross income limit for a four-person assistance group of \$2,043 as stipulated in Chapter 10, Appendix A. The Claimant's countable net income of \$2,048.46 listed on the notification's computation sheet

exceeds the net income limit for a four-person benefit group of \$1,571 as listed in Appendix A.

- 6) Since the Claimant's income exceeds the maximum monthly income limits for a Food Stamp Assistance Group of four persons, the Department was correct in proposing to terminate the Claimant's Food Stamp benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate the Claimant's Food Stamp benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of September, 2005.

**Pamela L. Hinzman
State Hearing Officer**