



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 27, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 6, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny/terminate your Food Stamp benefits based on excessive gross income.

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 and benefit levels for the Food Stamp Program are based on current policy and regulations. Some of these regulations state that when no AG member is elderly or disabled, the AG's gross income must be equal to or less than the gross income limit in Appendix A. If the gross income exceeds the amount in Appendix A, the AG is ineligible. (West Virginia Income Maintenance Manual ' 10.4 and 7 CFR 273.10(e) - Code of Federal Regulations)

The information which was submitted at your hearing revealed that your gross monthly income exceeds the maximum allowable income for an Assistance Group of four (4).

It is the decision of the State Hearings Officer to **uphold** the action of the Department in denying/terminating your Food Stamp benefits effective September 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-6505

**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 December 27, 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 December 6, 2005 on a timely appeal, filed August 19, 2005.

It should be noted here that the Claimant's benefits were reinstated effective November 2005 due to a change in employment and decrease in income. This hearing will only address benefits for the month of September 2005.

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:

_____, 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 is correct in their action to close the Claimant's Food Stamp case based on excessive gross income.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual ' 10.4 and Appendix A.
7 CFR ' 273.9 & 7 CFR ' 273.10 - Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHHR-1 Hearing Request received August 19, 2005
DHHR-2 Notice of Decision dated 8/9/05
DHHR-3 Verification of household income
DHHR-4 WVIMM, Chapter 10.4.C.1
DHHR-5 WVIMM, Chapter 10, Appendix A
DHHR-6 WVIMM 10.3.CC

Claimant's Exhibits:

Claimant's-1 2005 Bonus Plan for [REDACTED]

VII. FINDINGS OF FACT:

- 1) The Claimant's Food Stamp case was undergoing a reevaluation to determine continued eligibility and benefit levels. The Department reviewed the information provided by the Claimant and determined that the Assistance Group's (AG's) gross monthly income was in excess of the maximum allowable income for an AG of four (4).
- 2) On August 9, 2005, the Department sent the Claimant a Notice of Decision (DHHR-2) that includes some of the following pertinent information.

Action:	Your Food Stamps will stop. You will not receive this benefit after August 2005.
Reason:	Income is more than the gross income limit for you to receive benefits. Earned income increased.

- 3) The Department submitted exhibit DHHR-3, Earnings Statements for _____ (Pay Date of 7/8/05, gross pay amount of \$910), and Earnings Statement (Pay Date 7/22/05, gross pay amount of \$1010). Income from this source is received bi-weekly by the AG. The Department's gross monthly income calculations are as follows:

$$\begin{array}{r} \$910 - (7/8/05 \text{ gross pay amount}) \\ +\$1010 - (7/22/05 \text{ gross pay amount}) \\ \hline \$1920 - \text{total} \\ \text{divided by } 2 \\ \$960 \text{ (average income every two weeks)} \\ \times 2.15 \text{ (bi-weekly multiplier)} \\ \hline \$2064 - \text{Gross Monthly Income} \end{array}$$

- 4) The Claimant testified that the 7/22/05 gross pay amount includes a \$100 Management Bonus Incentive (See Claimant's-1). She contends that this bonus is only awarded when her husband's company meets their budget and sales goal. She stated that this is not guaranteed income and that he is a salaried employee who is paid \$910 every two weeks (bi-weekly). The Claimant acknowledged that her husband has received the \$100 bonus each and every month for the period January 2005 through and including the period in question.
- 5) WV Income Maintenance Manual, Chapter 10.3.CC states that recurring bonuses are counted as earned income.
- 6) WV Income Maintenance Manual, Chapter 10.4.C.1 - states that when no AG member is elderly or disabled, the gross income must be equal to or less than the gross income limit in Appendix A. If the gross income exceeds the amount in Appendix A, the AG is ineligible. It should be noted that there are no elderly or disabled members in the assistance group
- 7) According to the WV Income Maintenance Manual, Chapter 10, Appendix A, the maximum allowable gross income for an AG of four (4) is \$2043.

VIII. CONCLUSIONS OF LAW:

- 1) When determining eligibility for Food Stamp benefits, policy provides that the AG's gross income must be equal to or less than the gross income limit in Appendix A.
- 2) Policy states that recurring bonuses are counted as earned income. Because the AG has consistently received the \$100 "Management Bonus Incentive" every month since January 2005, this is clearly a recurring bonus and must be counted as income.
- 3) The AG's monthly gross income was correctly determined to be \$2064 and this amount clearly exceeds the maximum allowable gross monthly income of \$2043 for an AG of four (4).

- 4) Whereas the AG's gross monthly income exceeds the gross income limit in Chapter 10, Appendix A, the Department has correctly followed policy in denying/terminating your Food Stamp benefits for the month of September 2005.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying/terminating your Food Stamp benefits in September 2005.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of December, 2005.

Thomas E. Arnett
State Hearing Officer