



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 19, 2005

Dear Mr. & Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 9, 2005. Your hearing request was based on the Department of Health and Human Resources' action to count the full amount of you pension when determining your Food Stamp benefit amount.

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: Eligibility for Food Stamps benefits and the amount of the Food Stamp allotment are based on a determination of countable household income and the number of individuals in the Food Stamp benefit group. (West Virginia Income Maintenance Manual ' 10.4 and 7 CFR 273.9-Code of Federal Regulations)

The information which was submitted at your hearing reveals that you were entitled to an income deduction from your pension.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in denying you a income deduction from your pension. The Department will reevaluate your Food Stamp benefits retroactive to your most recent application/review and issue additional Food Stamps based on the corrected household income amount.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Anna Grafton, ESS, DHHR

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

_____,
Claimant,

v.

Action Number: 05-BOR-6730

**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 19, 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 November 9, 2005 on a timely appeal, filed September 30, 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
_____, Co-Claimant
Anna Grafton, ESS, 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 Claimants an income deduction from a pension fund.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual ' 10.4
7 CFR ' 273.9 - Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- A. Qualified Domestic Relations Order from [REDACTED] Retirement Program Plan 056, Civil Action # 04-D-55, entered on June 16, 2004.
- B. Pension Benefit Guaranty Corporation for period 2/1/05 to 2/28/05
- C. Notarized statement of _____ dated 12/6/04.
- D. PBGC Model Shared Payment QDRO – Qualified Domestic Relations Order, Case No. 04-D-55, entered June 14, 2005
- E. Final Order, Family Court of [REDACTED] County, WV, Civil Action 04-D-55 entered on 12/10/04

VII. FINDINGS OF FACT:

- 1) The Claimants contends that while their most recent application for Food Stamp benefits was approved, the Department counted the full amount of _____'s pension when determining the Food Stamp benefit amount. The Claimants allege that the Department should have only counted ½ of the pension amount and that they requested a hearing on this issue previously but were denied the opportunity to appeal the Department's action.
- 2) The Department contends a Pre-hearing Conference was conducted with the Claimants and this is the first time that an appeal was requested before a State Hearing Officer. Further, the Department acknowledged that the [REDACTED] County Court has ordered Mr. _____ to pay his ex-wife ½ of his retirement, however, the full amount of his retirement was sent directly to him and then he was required to pay his ex-wife from the amount received. The Department contends that because Mr. _____ had access to the money, the full amount of the pension counted as Food Stamp income.
- 3) Exhibit B shows that the full amount of the retirement check was sent to Mr. _____ and exhibit C is a notarized statement from Mr. _____ wherein he indicates that "I give my ex-spouse \$490.00 a month which is one half of our marital equity of my month pension for her support."

- 4) Exhibit D was received by the Department on September 28, 2005 and according to testimony received from the Department, shows that the retirement company, Pension Benefit Guaranty Corporation (PBGC), began separating the retirement amount and issued two separate checks. Because the Claimant no longer had access to the money, the Department started counting ½ of the retirement amount (the amount he receives in a check) in October 2005.
- 5) The Claimants contend that the final divorce order (exhibit E) states that the award to his ex-wife is not alimony or spousal support, but part of the property settlement agreement. The Claimants contend that it is not their fault that the retirement company, PBGC, took so long to separate the checks.
- 6) West Virginia Income Maintenance Manual, Chapter 10.4 contains policy relating income disregards and deductions and to computation of and eligibility for Food Stamp benefits. Food Stamp eligibility and benefit amount is determined by finding the countable income and number in the benefit group. Chapter 10.4,D,17 of the West Virginia Income Maintenance Manual states that income received by a member of the Income Group, which is intended and used for the care and maintenance of an individual whose income is not used in determining the eligibility or benefit level of the payee's AG, is excluded as income.
- 7) West Virginia Department of Health and Human Resources, Common Chapters Manual, Chapter 770(B) states that the time limit for requesting a hearing is within 90 days from the effective date of the action.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that Food Stamp eligibility and benefit amount is determined by the countable income and number of individuals in the benefit group.
- 2) When determining the Claimants' income, the Department acknowledged the [REDACTED] County Court Order that ordered Mr. _____ to pay his ex-spouse ½ of his pension, but indicated that the full amount of retirement was received by him and therefore counted in full.
- 3) Policy found in Chapter 10.4 verifies that the Claimant qualified for a Food Stamp income deduction and failure to comply would have resulted in legal penalties through the Family Court System. The Department should have counted ½ of the retirement amount as income.
- 4) While Administrative Hearings must be requested within 90-days of the effective date of an adverse action taken by the Department, there is some dispute when the original hearing was requested in this case. I am therefore ordering the Department to reevaluate the Claimant's Food Stamp benefits retroactive to the date of the Claimants most recent approval (Application or Review) and issue additional Food Stamp benefits based on the corrected household income. The calculation of household income will include only ½ of the pension amount _____ was receiving from PBGC.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department in denying you an income deduction from your pension. The Department will reevaluate your Food Stamp benefits retroactive to your most recent application/review and issue additional Food Stamps based on the corrected household income amount.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of December, 2005.

**Thomas E. Arnett
State Hearing Officer**