



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

April 10, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 9, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your Food Stamp benefits based on an increase in your 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: Eligibility for Food Stamp benefits and the amount of the Food Stamp allotment are based on a determination of countable household income (that income remaining after all appropriate disregards and deductions are applied) and the number of individuals in the Food Stamp benefit group. (West Virginia Income Maintenance Manual ' 10.4 and 7 CFR 273.10(e) - Code of Federal Regulations)

The information submitted at your hearing reveals that the Department has correctly proposed that your Food Stamp benefits be reduced from \$51 per month to \$40 per month effective March 1, 2006, based on an increase in income.

It is the decision of the State Hearings Officer to **uphold** the proposal of the Department to reduce your Food Stamp benefits from \$51 per month to \$40 per month effective March 1, 2006.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Angela Hammonds, ESW, DHHR

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

_____,
Claimant,

v.

Action Number: 06-BOR-1152

**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 April 10, 2006 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 March 9, 2006 on a timely appeal, filed February 17, 2006.

It should be noted here that the Claimant's benefits continued pending a hearing decision.

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
_____, Claimant's Aid
Angela Hammonds, 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 proposal to reduce the Claimant's Food Stamp benefits based on an increase in income.

V. APPLICABLE POLICY:

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Notice of Decision 2/21/06 & 2/10/06
- D-3 WVIMM 10.4
- D-4 Summary of shelter / utility deductions requested by the Claimant
- D-5 Summary of shelter / utility deductions used by the Department
- D-6 Food Stamp Allotment Determination - \$40 per month effective 3/1/06
- D-7 WVIMM, Chapter 10, Appendix C
- *D-8 Verified budgeted amount from _____ and Food Stamp calculations with & without the SUA applied.

*indicates the evidence was received subsequent to the hearing as ordered on the record.

Claimant's Exhibits:

- C-1 Notification of FS review
- C-2 _____ gas bill for _____ - Prepared 1/12/06.

VII. FINDINGS OF FACT:

- 1) The Claimant was notified via a Notice of Decision (Exhibit D-2) that her Food Stamp benefits were going to decrease from \$51 per month to \$40 per month effective March 1, 2006 due to a \$24 increase in income.

- 2) The Claimant is contesting the reduction in Food Stamp benefits and stated that she would qualify for more Food Stamps if the Department used her actual utility costs for an income deduction instead of the Standard Utility Allowance, hereinafter SUA. Additionally, she believes she should be given a shelter deduction for a loan she got from her mother to repair her roof.
- 3) The Claimant's aid, [REDACTED] completed the Claimant's Food Stamp redetermination for her on February 9, 2006. The Department contends that the Claimant's bills were added and came to \$216 per month. Because the SUA gives an individual a monthly deduction of \$272 per month, it was beneficial to give the Claimant the SUA amount.
- 4) The Department contends that the Claimant has previously used the SUA amount and that her reduction in Food Stamp benefits is the result of her increase Cost Of Living Allowance (COLA) in SSI income. (SSI Income increased from \$579 to \$603)
- 5) The Claimant requested that her actual [REDACTED] gas bill (prepared 1/12/06) presented at the redetermination (exhibit C-2) be used when calculating her utility deductions, however, policy found in Chapter 10.4 states that the amount credited is the anticipated monthly amount of utilities for which the AG expects to be billed during the certification period – A monthly average over the period of 12 months.
- 6) As ordered at the hearing, the record remained opened to get a statement from [REDACTED] regarding the Claimant's monthly budget amount. In correspondence dated March 9, 2006 (exhibit D-8), [REDACTED] Customer Service Center provided the following statement:

Per your request a regular budget at this address would be \$118 a month plus an add on of \$32 a month for past due amount on account would be a total of \$150 per month.

Because policy does not allow past due amounts to be included in the deduction, the Claimant's actual monthly gas bill is \$118.

- 7) The Claimant's monthly utility bills provided at the time of the redetermination (and monthly gas bill verified by [REDACTED] exhibit D-4 & D-8:

\$118.00 – gas (verified in D-8)
\$ 33.00 - electric
\$ 33.60 – phone
\$ 17.81 – sanitation (sewer)
\$ 14.58 – water
\$ 16.83 - garbage
\$233.82 – actual utility costs per month

Because the SUA is \$272, it is clearly in the Claimant's best interest to use the SUA deduction.

- 8) The Claimant's request to be credited with a shelter deduction for a loan agreement with her mother is denied. This loan does not qualify as a mortgage / second mortgage, or home equity loan as the dwelling has not been used as collateral. In addition, this loan does not qualify under the section of policy that allows for credit of the cost of repairing a home damaged or destroyed due to a natural disaster. The Claimant failed to verify that her roof damage was the result of an officially declared (State or Federal government) natural disaster.
- 9) WV Income Maintenance Manual, Chapter 10.4 contains policy regarding income disregards and deductions, and to computation of and eligibility for Food Stamp benefits.
- 10) West Virginia Income Maintenance Manual, Chapter 10.4.B.7.b - states that any client may choose to use actual utility costs instead of the SUA. Those ineligible for the SUA must use actual costs to receive a deduction. Those who qualify for the SUA due to LIEAP, and who incur utility expenses in excess of the LIEAP payment, may use actual costs in lieu of the SUA.

Past due amounts of utility expenses are not counted, even if included in the most recent billing. Use the anticipated monthly amount of utilities for which the AG expects to be billed during the certification period [Emphasis added]. Include any amounts expected to be paid by LIEAP, direct or vendor payments.

- 11) West Virginia Income Maintenance Manual, Chapter 10.4.B.7.c - provides that certain AG's may choose to have the SUA used, rather than the actual costs of their utilities. The SUA is adjusted yearly to allow for fluctuations in utility costs. The current SUA, found in Appendix B, is \$272 per month.

The AG may change from the SUA to actual utility costs or viceversa at each redetermination. Eligibility for the SUA must be reevaluated when the AG moves or reports a change in circumstances which may affect SUA eligibility. AG's assigned a 24-month certification period may change at the 12-month review.

- 12) According to the WV Income Maintenance Manual, Chapter 10.4.B.7.a - Items considered in arriving at shelter costs are the continuing amounts of:

- Rent. Security or damage deposits are not a shelter expense.
- Mortgage payments. This includes second mortgages and home equity loans and any other loans for which the dwelling is used as collateral.
- Interest on mortgage payments
- Condominium and association fees, regardless of purpose for the fees.
- Property taxes and special tax assessments on the structure and lot required by State or local law. This does not include assessments such as police and fire fees, unless the fee is based on property valuation.

- Insurance on the structure and lot. This does not include insurance on furniture or personal belongings. If the insurance cost on the structure and the cost on the personal belongings/furniture cannot be identified separately, the entire insurance payment is allowed.
- Cost of repairing the home which was damaged or destroyed due to a natural disaster such as a fire or flood. This does not include charges that will be or have been reimbursed from any source such as insurance, private agency, etc.
- A car payment when the AG lives in the vehicle
- Insurance on the vehicle itself when the AG lives in the vehicle

VIII. CONCLUSIONS OF LAW:

- 1) The Claimant's February 2006 redetermination resulted in a reduction in Food Stamp benefits from \$51.00 per month to \$40.00 per month effective March 1, 2006.
- 2) Contrary to the Claimant's contention, the evidence fails to demonstrate that it would have been beneficial for the Department to use the Claimant's actual monthly utility amount (\$233 per month) instead of the SUA amount (\$272 per month) as an income deduction. The Claimant's January 2006 gas bill cannot be used to determine Food Stamp benefits as it is not indicative of an average monthly charge. Based on this evidence, it was in the best interest of the Claimant to use the SUA.
- 3) There are no provisions in policy that would allow the Claimant a deduction for the loan she obtained from her mother to repair her roof. The Claimant's shelter deduction was assessed correctly by the Department.
- 4) The reduction in Food Stamp benefits occurred as a result of the Claimant receiving an increase (COLA) in her monthly SSI income amount. Based on the evidence, the Department was correct to reduce the Claimant Food Stamp benefits due to an increase in income. The Claimant monthly Food Stamp benefit amount effective March 1, 2006 should be \$40 per month.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce your Food Stamp benefits from \$51 to \$40 per month effective March 1, 2006.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of April, 2006.

**Thomas E. Arnett
State Hearing Officer**