



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

July 28, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 4, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your food stamp and WV WORKS benefits.

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 and WV WORKS Programs are based on current policy and regulations. Some of these regulations state as follows: To be eligible for programs administered by the Division of Family Assistance (DFA), the total amount of countable assets cannot exceed the amounts listed. For food stamp benefits, the asset limit is \$2,000 all AG's except \$3,000 when at least one AG member is age 60 or over, or is disabled, according to Section 12.15B, regardless of the size of the AG. The countable assets cannot exceed \$2,000 for the WV WORKS Program. (Section 11.3 of the West Virginia Income Maintenance Manual)

The information which was submitted at your hearing revealed that your countable assets exceeded \$2,000.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate your food stamp and WV WORKS benefits.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Judy B. Bell, DHHR

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

_____,

Claimant,

v.

Action Numbers: 06-BOR-1160 & 2526

**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 May 4, 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 May 4, 2006 on a timely appeal, filed February 17, 2006.

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

II. PROGRAM PURPOSE:

The Programs entitled WV WORKS and Food Stamp are set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

WV Works was created by Senate Bill 140, Article 9 of the West Virginia Code and the Temporary Assistance to needy Families Block Grant, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The purpose of WV Works is to provide assistance to needy families with children so they can be cared for in their own home, reduce dependency by promoting job preparation, work and marriage. The goals of WV Works are to achieve more efficient and effective use of public assistance funds, reduce dependence on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

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 food coupons to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

_____, Claimant

Rebecca Blackburn, Front End Fraud Unit (FEFU) Supervisor

Pamela Brown, Department Hearing Representative

Presiding at the Hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the claimant meets the financial eligibility requirements in order to qualify for WV WORKS and food stamp benefits.

V. APPLICABLE POLICY:

Sections 11.3, 11.2D, 11.4B, 10.24D and 10.4D #14 of the West Virginia Income Maintenance Manual and Common Chapters Manual 780D
7 CFR 273.8

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notification Letter dated 02/13/06
- D-2 Front-End Fraud Investigative Findings dated 02/10/06
- D-3 Certificate of Deposit 72098798 Inquiry for _____
- D-4 List of non-benefit deposits since 07-03
- D-5 Statements & Deposits from First Community Bank
- D-6 Department's Summary

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of WV WORKS and food stamps. A case review was completed 01/19/06. A request was made for a front-end fraud investigation.
- 2) The investigation revealed that the claimant had a certificate of deposit for her son _____, who is in the benefit group, worth \$7,284. (D-2 & D-3) The printout from the bank shows available balance: 7284.03.

- 3) The bank balance at review was \$88.59.
- 4) Total assets - \$7,372.59.
- 5) Unreported income deposited in the claimant's checking account goes back to July of 2003, total amount of \$40,416.67. According to Ms. Brown's testimony, this shows a pattern of income. Projected income in the case of \$2,652.50 was calculated by averaging the prior two months of December and January deposits minus the TANF and Social Security benefits. This was used as earned income in calculating benefits and earned income deductions received although the Department does not know the exact source of the income. Case is also ineligible based on income. (D-4) It was clarified during the hearing that the \$21,000 deposit in 03/04 was for the loan on a Honda.
- 6) A letter dated 02/13/06 was mailed to the claimant. It reads in part: Your WV WORKS will stop. You will not receive this benefit after February 2006. Reason: Income is too much for you to receive benefits. The amount of assets is more than is allowed for this benefit. (D-1)
- 7) Testimony from Ms. Brown revealed that once the check is closed, the benefit group loses its categorical eligibility for food stamps and the food stamps were closed for excessive assets.
- 8) The letter dated 02/13/06 also addresses food stamps. It reads in part: Your food stamps will stop. You will not receive this benefit after February 2006. Reason: Income is too much for you to receive benefits. The amount of assets is more than is allowed for this benefit. (D-1)
- 9) Testimony from Ms. _____ revealed that the Certificate of Deposit is money her son received from an accident several months ago. The reason her name is on the CD is because he is a minor. It is set up by an attorney and Nationwide and her son cannot touch the money until he is eighteen in July. Neither one of them has access. A court has to approve any withdrawal.
- 10) The claimant stated she did not receive any legal document to show the above agreement.
- 11) Testimony from Ms. _____ testified a lot of the other money in the account belongs to her mother. Her mother is currently in _____ caring for the claimant's uncle who is terminally ill. Her mother has a lot of bills and plans on returning home after her uncle passes away. She pays her bills while she is gone. Her mother receives two Social Security checks which total approximately \$1300 to \$1400. She puts the money in her account and pays her mother's bills. Her house payment is \$504 and other bank payment is almost \$500. Her mother sends her other money to cover the bills. She is not Power of Attorney for her mother. She deposits her mother's checks in her (Ms. _____) account.
- 12) Section 11.3 of the West Virginia Income Maintenance Manual reads in part: To be eligible for programs administered by the Division of Family Assistance (DFA), the

total amount of countable assets cannot exceed the amounts listed. For food stamp benefits, the asset limit is \$2,000 all AG's except \$3,000 when at least one AG member is age 60 or over, or is disabled, according to Section 12.15B, regardless of the size of the AG. For WV WORKS, the total assets cannot exceed \$2,000 regardless of the number in the benefit group.

- 13) Section 11.4B of the West Virginia Income Maintenance Manual reads in part that Certificates of Deposits (CD's) are considered as an asset for food stamps and WV WORKS. The amount deposited, plus any accrued interest, minus any penalties imposed for early withdrawal, is counted as an asset.
- 14) Section 10.24D #14 of the West Virginia Income maintenance Manual reads in part that unstated income is income that has not been reported by the household, and is not otherwise known to the agency, but is determined to exist because the client's paid living expenses exceed income from known sources.

The amount of unstated income is the difference between the known monthly income and the monthly paid living expenses.

When the information in the client's record, including statements of the client or third-parties, indicates that paid expenses exceed the stated income, the existence of unstated income must be explored. The client must complete form ES-IN-1, Statement of Monthly Living Expenses.

If insufficient or conflicting evidence exists, the Worker must question the client about the possibility of unstated income and allow him the opportunity to explain how his expenses are met. If the client provides satisfactory explanation, the Worker records the explanation.

If the client's explanation of how the expenses are met is inadequate, the Worker makes a recording of the explanation and then determines the amount of unstated income to count. To determine the amount of unstated income to count, the Worker compares the usual amount of monthly living expenses with the client's reported income, taking into consideration any other reasonable explanations the client provides. The difference is unstated income and is counted as unearned income.

- 15) Section 10.4D #14 of the West Virginia Income Maintenance Manual reads that for food stamps, there is no provision for counting unstated income.
- 16) Section 11.2D of the West Virginia Income Maintenance Manual reads in part that a client may not have access to some assets. To be considered an asset, the item must be owned by or available to the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset. Examples of inaccessibility included, but are not limited to, the following:
 - Legal proceedings such as probate, liens (other than those required for financing the asset). Items encumbered, or otherwise unavailable, due to litigation are not considered assets until the court proceedings are completed and a court decision is reached. The agency is required to follow the dictates of the court order.

- Irrevocable agreements: For WV WORKS and Medicaid, transfers to an irrevocable agreement or trust may result in a penalty.
 - Joint ownership.....
- 17) Section 780D of the Common Chapters Manual reads in part: The State Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing.....The hearing officer's decision must also be based on facts as they existed at the time of the Department's action or proposed action at issue.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that the total amount of countable assets cannot exceed certain amounts.
- 2) The asset level for this household is \$2,000 for both WV WORKS and food stamps.
- 3) A household member has a Certificate of Deposit in the amount of \$7,284. There was also a bank balance at the time of review in the amount of \$88.59. Total assets \$7,372.59.
- 4) Testimony received from the claimant does not clearly demonstrate any changes to the conclusions reached by the Department. The claimant contends the CD is inaccessible but did not have any convincing evidence which would change the conclusion reached by the Department.
- 5) The Department's proposal to terminate benefits because of excessive assets was valid.
- 6) The Department also determined the claimant had income from unstated income.
- 7) There is no provision in policy to consider unstated income for food stamps.

IX. DECISION:

It is the finding of the State Hearing Officer that the Department took the correct action to terminate the claimant's food stamp and WV WORKS case due to excessive assets. While the Department also determined the claimant had excessive income due to unstated income, this issue is moot as the assets are excessive and the household's countable income would not be determined. However, policy does state that unstated income is not considered for food stamps. The action described in the notification letter dated February 13, 2006 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of July, 2006.

**Margaret M. Mann
State Hearing Officer**