



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

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

January 27, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mrs. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 17, 2006. Your hearing request was based on the Department of Health and Human Resources' action to terminate your Food Stamp benefits due to excessive gross 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 as follows: When at least one Assistance Group member is elderly or disabled as specified in Section 12.15,B, eligibility is determined by comparing the countable income to the maximum net monthly income found in Appendix A. There is no gross income test.

Based on information submitted at your hearing, you receive Social Security Disability benefits and the Department should have applied the net income test when determining your Food Stamp allotment after considering all allowable deductions.

It is the decision of the State Hearing Officer to **reverse** the action 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  
Janice Rhodes, ESW, DHHR

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 05-BOR-6952**

**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 January 27, 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 January 17, 2006 on a timely appeal filed November 16, 2005

It should be noted that Food Stamp benefits have not been continued pending the results of the hearing.

**II. PROGRAM PURPOSE:**

The program entitled Food Stamps 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

Janice Rhodes, Economic Service Worker, DHHR

Janet Parsons, Economic Service Worker, DHHR (observing)

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(s) to be decided is whether the Department took the correct action to terminate the Claimant's Food Stamp benefits due to excessive gross income.

### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Chapter 10.4, Chapter 10, Appendix A, and Chapter 12.15, B

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

D-1 Hearing request information

D-2 Food Stamp Notice of Decision dated November 9, 2005

D-3 West Virginia Income Maintenance Manual Chapter 10.4 and 10, Appendix A

D-4 Income information and Rapids gross income test data

#### **Claimant's Exhibits:**

C-1 Letter from [REDACTED] County Emergency Medical Squad

### **VII. FINDINGS OF FACT:**

- 1) The Claimant's Food Stamp case was undergoing a redetermination in November 2005 and the Department determined total gross household income as \$2,557.44. This includes the Claimant's husband's average earned income of \$2,077.44 and the Claimant's Social Security Disability (RSDI) income of \$480 per month (D-4).
- 2) The Department sent a Notice of Decision to the Claimant on November 9, 2005 (D-2), which states:

Your Food Stamps will stop. You will not receive this benefit after November 2005. The income we count is too much for you to receive benefits. Income is more than the gross income limit for you to receive benefits. Earned income increased.

3) Mrs. \_\_\_\_\_ testified that she believes policy is unfair in counting her household's gross income instead of the net amount actually received. She stated that she and her husband do not have medical insurance and have more than \$20,000 in unpaid medical bills, as well as monthly prescription expenses. She testified that her husband is not always guaranteed the amount of hours reflected on his pay stubs and provided a statement from his employer (C-1) to verify the amount of hours he is guaranteed to work each week. She indicated, however, that her husband had been working more hours in recent weeks. Ms. Rhodes indicated that, based on past case history, pay stubs used to determine income at the November redetermination are a reflection of the Claimant's typical earnings.

4) West Virginia Income Maintenance Manual Chapter 10.4C, 1 states:

When at least one AG member is elderly or disabled as specified in Section 12.15, B, eligibility is determined by comparing the countable income to the maximum net monthly income found in Appendix A. There is no gross income test.

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 so, the AG qualifies for the disregards and deductions in Section 10.4, B. If the gross income exceeds the amount in Appendix A, the AG is ineligible.

5) West Virginia Income Maintenance Manual Chapter 12.15, B states that disability is established without a physician's statement when:

- The individual receives benefits from a governmental or private source, and these benefits are based on his own illness, injury or disability. This includes, but is not limited to: Workers' Compensation, RSDI, SSI, Veteran's Administration benefits, Black Lung benefits, AFDC (incapacity), Medicaid (incapacity, blindness or disability), private insurance, sickness benefits, etc. However, if any of these conditions is questionable, such as a low percentage disability for VA benefits, a physician's statement may still be required.

6) West Virginia Income Maintenance Manual Chapter 10.4B lists allowable deductions for the Food Stamp Program. These include, but are not limited to, a deduction for medical expenses in excess of \$35 for an Assistance Group member who is elderly or disabled as defined in Section 12.15B.

7) West Virginia Income Maintenance Manual Chapter 10.4A states:

Eligibility is determined and benefits are issued on a monthly basis. Therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. The following information applies to earned and unearned income. For all

cases, the Worker must determine the amount of income that can be reasonably anticipated for the AG. For all cases, income is projected\*; past income is used only when it reflects the income the client reasonably expects to receive.

#### 1. Methods For Reasonably Anticipating Income

There are 2 methods for reasonably anticipating the income the client expects to receive. One method uses past income and the other method uses future income. Both methods \_\_\_\_\_ be used for the same AG for the same certification period because the method used varies with the circumstances of each source of income. The situations which prompt usage of one or the other method are listed below. More details are contained in the following items.

Use past income only when both of the following conditions exist for a source of income:

- Income from the source is expected to continue into the certification period; and
- The amount of income from the same source is expected to be more or less the same.

**NOTE:** For these purposes, the same source of earned income means income from the same employer, not just the continued receipt of earned income.

Use future income when either of the following conditions exists for a source of income:

- Income from a new source is expected to be received in the certification period; or
- The rate of pay or the number of hours worked for an old source is expected to change during the certification period.

### **VIII. CONCLUSIONS OF LAW:**

- 1) The Claimant receives Social Security Disability benefits.
- 2) West Virginia Income Maintenance Manual Chapter 12.15B states that disability is established without a physician's statement when an individual receives benefits from a governmental or private source.
- 3) Policy in West Virginia Income Maintenance Manual Chapter 10.4C, 1 states that when at least one Assistance Group member is elderly or disabled as specified in Section 12.15B, eligibility is determined by comparing the countable income to the maximum net monthly income found in Appendix A. There is no gross income test.

- 4) The Claimant's net adjusted income should have been used by the Department in determining eligibility after all allowable deductions, including potential medical deductions for the Claimant, were considered.
- 5) The Hearing Officer finds that anticipated earned income was reasonably determined based on testimony concerning case history, however the Department failed to properly evaluate Food Stamp eligibility based on net income guidelines.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate the Claimant's Food Stamp benefits. This reversal is based on a failure to evaluate eligibility using the net income test as there is insufficient information to determine eligibility using those guidelines.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 27th Day of January, 2006.**

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**Pamela L. Hinzman**  
**State Hearing Officer**