



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 10, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 23, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for food stamps.

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: AG's with a new business, that has been in existence less than a year, have their income averaged over the amount of time the business has been in operation. From this, the monthly amount is projected for the coming year. However, if the averaged amount of past income does not accurately reflect the anticipated monthly circumstances because of a substantial increase or decrease in business, the income is calculated based on anticipated earnings. Incurred business expenses are also averaged over the amount of time the business has been in operation. However, if the averaged amount of past expenses does not accurately reflect the anticipated monthly circumstances because of a substantial increase or decrease in business, the expenses are calculated based on anticipated costs. (WV Income Maintenance Manual Section 10.4D #4)

The information which was submitted at your hearing revealed that you started a new business in June 2005. The averaged amount of past income does not accurately reflect your current circumstances.

It is the decision of the State Hearing Officer to reverse the action of the Department to deny your application for food stamps.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Susan Godby, DHHR

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

_____,

Claimant,

v.

Action Number: 06-BOR-856

**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 February 23, 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 February 23, 2006 on a timely appeal, filed January 19, 2006.

It should be noted here that the claimant's benefits have been denied.

II. PROGRAM PURPOSE:

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

III. PARTICIPANTS:

_____, Claimant
Melinda Wilson, Economic Service Worker, DHHR

Dorothy Ellison Hunter (formerly McNeely), Economic Service Supervisor, DHHR
Susan Godby, Department Hearing Representative

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

IV. QUESTION(S) TO BE DECIDED:

The question(s) to be decided is whether the Department is correct in the decision to deny the claimant's food stamp application because financial eligibility requirements could not be met.

V. APPLICABLE POLICY:

Sections 10.4D & 10.4C#2 of the West Virginia Income Maintenance Manual
7 CFR ' 273.11

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Notification Letter dated 01/18/06
- D-3 Section 10.4 of the Income Maintenance Manual
- D-4 Copy of income and expenses
- D-5 Department's Summary
- D-6 Statement from _____ received 01/19/06
- D-7 Statement from _____ received 12/08/05
- D-8 Verification Checklist dated 12/02/05

Claimant's Exhibit:

- C-1 Request for information dated 12/29/05

VII. FINDINGS OF FACT:

- 1) The claimant applied for food stamps 12/02/05 declaring zero income. The office received a LIEAP application on 11/02/05 which stated income of \$500 per month. The worker requested verifications. The information was not returned and the LIEAP application was denied.
- 2) The claimant is self-employed. He reported he did not file an income tax form for the past year. The carpenter job that the claimant worked in June was new employment. A verification checklist issued on 12/02/05 requested in part 2004 taxes (Schedule C) or all expenses & income from 01/01/05 to 11/30/05. (D-8)
- 3) On 12/08/05, the claimant brought in a handwritten estimate of income and expenses. There were no receipts or other verifications as requested by the worker.

- 4) Another request for information was issued on 12/29/05. (C-1) It reads in part: "I need verification of your income and expenses (receipts and such for business). I need the actual bank statement. (Self-employment records) June thru Nov." The information was due 01/09/06.
- 5) The claimant provided a statement on 01/23/06. (D-4) The statement reads in part: Business report for _____, dba _____ Prepared for the calendar year of 2005. Total income \$23,958.24. Total expenses \$18,663.38. Net income \$5,294.86. Expenses were listed for shop rent (\$1200), truck fuel (\$2327.84), truck repairs (\$1,751.61), materials (\$4774.35), business expense constant (\$1,113.68), tool repairs (\$196.64), tool purchase (\$3984.98), business lic. (\$46.53), truck payments (\$2100.00), truck ins. (\$817.00), and cell phone (\$350.75).
- 6) The Department calculated the household's adjusted gross income as follows: \$23958.24 was the gross income received for June through November. Deductions were given for \$1200 shop rent, \$1751.61 truck repair, \$2000 material, \$1113.68 business expense constant, \$194.64 tool repair, \$3984.98 tool purchase, \$46.53 business license, \$350.75 cell phone. Total \$10644.19. Adjusted gross income was \$13510.69. This was prorated over 7 months. The income to be counted toward the food stamps was \$1930.10 per month. The gross income level for one person is \$1037.
- 7) A letter was sent to the claimant dated 01/18/06 (D-2) which reads in part: Your 12/02/05 application for Food Stamps has been denied. Reason: Income is too much for you to receive benefits. Income is more than the gross income limit for you to receive benefits.
- 8) The claimant disagrees with some of his business expenses not being allowed as a deduction. These include only \$2000 of \$4774.35 credited for materials, and allowances for truck payments, truck fuel, and truck insurance. He was not asked to bring in receipts. He brought in what he was asked for. He talked to a supervisor (Ms. McNeely) who advised him to separate his receipts as to what he would be using for the IRS and bring them in. It took him a little over a day to separate the expenses. That is what he brought. The claimant noted that policy reads that business expenses may be computed on a monthly basis or prorated over a twelve month period at the client's option. Mr. _____ stated he was not given an option. The income was prorated over seven months. He has worked as a carpenter for several years and if a job were available he would be doing carpentry work. He has not had any work since the middle of November.
- 9) Testimony from Ms. Wilson revealed that she did not allow expenses for truck fuel, truck payments, and truck insurance because there was no way to distinguish between personal and business use. The first statement sent in listed \$2000 for materials (average). The second statement dated 01/17/06 listed \$4774.35. She had nothing to substantiate the amount for materials. She had no receipts to substantiate the expenses. The business started in June and that is why the income was prorated over seven months.
- 10) Testimony from Ms. McNeely (now Hunter) revealed she discussed the claimant's income and expenses situation with him. He indicated his records were not pulled together and it would be hard for him to bring in his expenses. She told him they had to have a breakdown (of the expenses) and specific information to go by.

- 11) The claimant provided a statement during the application process in regard to the vehicle he drives. (D-6) It reads in part: "I bought the van which [REDACTED] drives so that he could have transportation in order to be able to get work. His old van had become unusable from age, but he could not qualify to purchase a vehicle with his credit. He agreed to pay the \$174.59 monthly payments and the annual insurance. He buys the insurance, on my policy, and is the named primary driver on statements of insurance, (which is currently paid up to August.) When he is working, [REDACTED] does cover the payment when it is due. If he has not got income, I make the payment and he pays me back when he does get work....."
- 12) Section 10.4D #4 of the West Virginia Income Maintenance Manual reads in part that when a AG member or a disqualified individual(s) receives income from self-employment, instructions below must be used to arrive at the gross profit which is used to calculate countable income. The method used to determine monthly gross income from self-employment varies with the nature of the enterprise. It is necessary to determine which of the following types of self-employment applies to the client's situation. Once the pattern of self-employment has been determined, this is used to determine how the income is counted. (3) New Business – AG's with a new business, that has been in existence less than a year, have their income averaged over the amount of time the business has been in operation. From this, the monthly amount is projected for the coming year. However, if the averaged amount of past income does not accurately reflect the anticipated monthly circumstances because of a substantial increase or decrease in business, the income is calculated based on anticipated earnings. Incurred business expenses are also averaged over the amount of time the business has been in operation. However, if the averaged amount of past expenses does not accurately reflect the anticipated monthly circumstances because of a substantial increase or decrease in business, the expenses are calculated based on anticipated costs.
- 13) Section 10.4D #4 (b) of the West Virginia Income Maintenance Manual reads in part that gross profit from self-employment is the income remaining after deducting any identifiable costs of doing business from the gross income. Examples of allowable deductions are employee labor costs; stock and supplies; raw material; seed; fertilizers; repair and maintenance of machinery and/or property; cost of rental space used for conducting business; payments on the principal and interest of the purchase price of income-producing real estate and capital assets, equipment, machinery and other durable goods; insurance premiums and taxes paid on the business and income-producing property; the principal, interest and taxes on the client's residence which is used in part to produce income. This is applicable only if the costs on the portion of the home used in the self-employment enterprise can be identified separately; advertising costs; utilities; office expenses (stamps, stationery, etc.); legal costs; and net loss from self-employment farming. Do not deduct the following: Federal, State or local income taxes; money set aside for retirement; travel from home to a fixed place of business and return; depreciation and amounts claimed as a net loss, except loss from farming self-employment.
- 14) 7 CFR ' 273.11 (b) Allowable costs of producing self employment income. (1) reads: Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor; stock; raw materials; seed and fertilizer; payments on the principal of the purchase price of income producing real estate and capital assets,

equipment, machinery, and other durable goods; interest paid to purchase income-producing property; insurance premiums; and taxes paid on income-producing property. (2) In determining net self-employment income, the following items are not allowable costs of doing business:.....(ii) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work) as these expenses are accounted for by the 20 percent earned income deduction.....

- 15) Section 10.4C#2 reads in part that the following steps are used to determine countable income for Food Stamps.

Step 1: Combine monthly gross non-excluded earnings and monthly gross profit from self-employment.

Step 2: Deduct 20% of Step 1.

Step 3: Add the gross non-excluded unearned income, including the AFDC/U check and any amount being repaid to the AFDC/U or SSI programs, due to intentional misrepresentation.

Step 4: Subtract the Standard Deduction found in Appendix B.

Step 5: Subtract the Dependent Care Deduction up to the maximums found in Appendix B.

Step 6: Subtract the amount of legally obligated child support actually paid.

Step 7: Subtract the Homeless Shelter Standard Deduction.

Step 8: Subtract allowable medical expenses in excess of \$35.

Step 9: Calculate 50% of the remaining income and compare it to the actual monthly shelter/utility cost of shelter/SUA amount.

Step 10:

	<p>No One Elderly</p> <p>Or Disabled</p>	<p>At Least One Person Elderly or Disabled</p>
<p>Shelter/Utility Equal To Or Less Than Step 9</p>	<p>No further computation is needed. The amount from Step 8 is the countable income.</p>	<p>No further computation is needed. The amount from Step 8 is the countable income.</p>
<p>Shelter/Utility Greater Than Step 9.</p>	<p>The amount is excess of 50%, not to exceed the shelter/utility cap, is deducted to arrive at countable income.</p>	<p>The amount in excess of 50% is deducted, without regard to the shelter/utility cap, to arrive at countable income.</p>

Step 11: Compare the countable income to the maximum net income in Appendix

A for the benefit group size.

VIII. CONCLUSIONS OF LAW:

- 1) The claimant applied for food stamps on December 2, 2005 declaring zero income. The claimant is a self-employed carpenter. The business enterprise began in June 2005.
- 2) The Department accepted an itemized list of business income and expenses provided by the claimant from June 2005 through December 2005 in January 2006.
- 3) The claimant had listed \$4774.35 for materials. Only \$2000 was allowed as this was what was listed on a previous statement. There was no clear testimony as to why the \$2000 was used. The cost of material is a legitimate deduction and the \$4774.35 should be allowed.
- 4) No deduction was allowed for truck payments, truck fuel and truck insurance as there was no way to distinguish between personal and business use. The reported expenses total \$6179.45.
- 5) Policy is clear that work-related personal expenses cannot be used as a deduction when determining net self-employment income. Policy also states that if the averaged amount of past income and past expenses does not accurately reflect the anticipated monthly circumstances because of a substantial increase or decrease in business, the income and expenses are calculated on anticipated earnings and costs.
- 6) The claimant reported he had not had any work since the middle of November.
- 7) There was a substantial decrease in business. The income should be calculated based on anticipated earnings and expenses.

IX. DECISION:

It is the finding of the State Hearing Officer that the Department is reversed in the decision to deny the claimant's application for food stamps. The case will be reevaluated for food stamp benefits using anticipated income and expenses beginning in December 2005. The claimant is expected to provide any documentation needed to determine eligibility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of July, 2006.

Margaret M. Mann
State Hearing Officer