



**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**

June 22, 2006

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 5, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your food stamp 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 Program is 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. (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 stamps. Please refer to Part IX of the decision for an explanation.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Henrietta Martin, DHHR

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

____,

Claimant,

v.

Action Number: 06-BOR-879

**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 5, 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 April 5, 2006 on a timely appeal, filed January 17, 2006.

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

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 of Agriculture.

III. PARTICIPANTS:

_____, Claimant
Henrietta Martin, 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 food stamp benefits.

V. APPLICABLE POLICY:

Sections 11.3, 11.2F, 11.2D, and 11.4C #1(a) 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 Department's Summary
- D-2 Section 11.2D of the West Virginia Income Maintenance Manual
- D-3 Section 11.3 of the West Virginia Income Maintenance Manual
- D-4 Section 11.4 of the West Virginia Income Maintenance Manual
- D-5 Statement from [REDACTED] Sales, Inc. dated 12/17/02
- D-6 Tax Assessment Statement
- D-7 Notification Letter dated 01/04/06

Claimant's Exhibit:

- C-1 Copy of check from [REDACTED] Redevelopment Auth. dated 02/14/06

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of food stamps. A food stamp review was completed 12/02/05. The case was recertified for continued food stamp benefits.
- 2) On December 30, 2005, the case was pulled for a supervisory review. The findings resulted in the household being ineligible for continued benefits due to non-homestead property with a value of \$3800.00 and \$2.00 in checking account. This exceeded the asset level by \$1802.00.

- 3) A letter was sent to the claimant dated 01/04/06 which reads in part:
- Your food stamps will stop. You will not receive this benefit after January 2006.
Reason: The amount of assets is more than allowed for this benefit. (D-7)
- 4) The non-homestead property is being considered as an asset. The property had been damaged by a flood in May 2002 which the claimant stated on September 23, 2002 was the reason the household had moved to another residence. The same home received flood damage in July 2001 but the claimant borrowed money to repair flood damage. On September 23, 2002 the claimant was requested to verify FEMA was to buy this property so it could be excluded as inaccessible. She never sent this verification in but the case was recertified for benefits after other requested information needed came in.
- 5) The claimant came in for a full scale review in November 2002. The same non-homestead property came up again. The claimant was not sure of the value so verification was requested again. No verification was received so the case was closed.
- 6) The claimant reapplied for food stamps December 19, 2002. She brought in a statement from [REDACTED] stating the trailer could not be resold. (D-6)
- 7) Testimony from Ms. Martin revealed that the case was closed due to the fact for several years workers applied incorrect policy in regard to the property. The claimant continued to receive property tax tickets and the claimant never verified there was an application for government monies to exclude the property. This property was accessible to the claimant to make disposition. The reasons cited were that the claimant borrowed monies on this mobile home and it was her collateral. The claimant had also stated she had signed up for a buy out program and had until August 2003 to get a decision. This was not verified. The home could not be excluded because the claimant had no intention of returning as she was in the process of purchasing another home.
- 8) Testimony from Ms. ____ revealed that she had no proof that she was on the buy-out. All she did was sign a paper and give it to them. She had no copy or anything. There was no lien against the property. After the 2002 flood, she bought a new home. She had to pay the old loan off and it was refinanced with her new home. She has a title on the old property. Since then, the property has been bought through the buy-out. Ms. ____ had a copy of the check dated 02/14/06 (C-1) in the amount of \$20,947.73. It is from the [REDACTED] Redevelopment Auth. for [REDACTED] While she was waiting for the buy-out, she could have sold her property. However, no one was going to buy it as it wasn't livable.
- 9) It is noted on the tax ticket entered into the record by the Department "condition U represents unliveable (sic)". (D-6)
- 10) 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.

- 11) Section 11.2F of the West Virginia Income Maintenance Manual reads in part that settlements for lost or damaged assets or insurance proceeds, earmarked for medical expenses, burial costs, replacement or repair of assets, are excluded, provided the client uses the money, as intended, in a reasonable period of time. Reasonable is defined as being used in the month of receipt or the month following receipt.

EXCEPTION: For food stamp benefits. Any governmental payments which are designated for the restoration of a home damaged in a disaster are excluded, as long as the AG is subject to a legal sanction if the funds are not used as intended.

- 12) 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.....

- 13) Section 11.4CC #1(a) of the West Virginia Income Maintenance Manual reads in part:

The client must be living in the home for the exclusion to apply.In addition, if the dwelling is temporarily unoccupied for reasons of employment, training or future employment, illness or inhabitability caused by casualty or natural disaster, and the family intends to return, the homestead is excluded.

There is no time period beyond which these exclusions are no longer considered to be temporary. This decision must be made on a case-by-case basis, taking into account the client's reasonable progress with plans.

- 14) 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 hearing officer's decision must be based on facts as they existed at the time of the proposed action at issue.
- 2) The asset level for this household is \$2,000.
- 3) The claimant had non-homestead property valued at \$3,800.00 at the time of the proposed closure. This property was damaged during floods in 2001 and 2002. The Department had not received any verification from the claimant that an application had been filed for government monies in order to exclude the property.
- 4) Credible testimony from the claimant revealed that the property was available for disposition although no one would buy it because it was not livable. She stated she had no proof that she was on the buy-out. There was no lien on the property.
- 5) Since the Department issued the closure notice on 01/04/06, the property in question has been bought through the buy-out program in the amount of \$20,947.73. The check was dated 02/14/06.
- 6) The Department's proposal to terminate benefits because of excessive assets was valid in January 2006.

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 case because of excessive assets. The claimant never verified she had signed up for the buy-out program as the property had been damaged by past floods. The date of the termination notice was 01/04/06. The claimant was issued a check dated 02/14/06 through the buy-out program in the amount of \$20,947.93. While this decision upholds the Department's proposal in January 2006 to terminate the food stamp case due to excessive assets, no action will be taken until the Department reevaluates the claimant's eligibility based on the fact the property has been sold.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of June, 2006.

**Margaret M. Mann
State Hearing Officer**