



**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**

January 17, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 11, 2007. 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: In cases with earned income, coupon allotments are calculated by adding all non-excluded earned income, deducting 20%, adding all non-excluded unearned income, subtracting the standard deduction, subtracting allowable medical expenses in excess of \$35, subtracting any legally obligated child support, giving a deduction for the amount of shelter/utility expenses in excess of 50% of the adjusted income and then comparing the resulting countable income to the Basis of Issuance Chart in Appendix C of Chapter 10. (WV Income Maintenance Manual Section 10.4(c) and 7 CFR 273.10(e).

The information which was submitted at your hearing revealed that your household income has increased. There is a disabled individual in the AG. The net income should have been considered instead of the gross monthly income when determining eligibility.

It is the decision of the State Hearing Officer to reverse the proposal of the Department to terminate your food stamp benefits.

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: 07-BOR-540

**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 11, 2007 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 11, 2007 on a timely appeal, filed December 8, 2006.

It should be noted here that the Claimant's benefits have been continued pending the 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

III. PARTICIPANTS:

_____, Claimant
_____, Claimant's Ex-Husband
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. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department is correct in the decision to terminate the Claimant's food stamps as the household income increased.

V. APPLICABLE POLICY:

Appendix A, Chapter 10, Sections 10.4C and 12.15 of the West Virginia Income Maintenance Manual
7 CFR 273.10 & 271.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Notification Letter dated 12/06/2006
- D-3 Section 10.4 of the Income Maintenance Manual
- D-4 Department's Summary

Claimant's Exhibit:

- C-1 Check Stub dated 12/01/2006

VII. FINDINGS OF FACT:

- 1) The Claimant went in the office for a Medicaid review on December 5, 2006. During the interview, the Claimant reported that her ex-husband who was in the food stamp Assistance Group (AG) was going to work. The earnings were expected to be \$8.57 an hour times 40 hours per week. It was determined that the income was excessive for a two person AG.
- 2) A notice was sent to the Claimant dated 12/06/06. It reads in part: Your food stamps will stop. You will not receive this benefit after December 2006. Reason: Earned income increased. Income is too much for you to receive benefits. Income is more than the net income limit for you to receive benefits. (D-2) The Claimant requested a hearing on this issue.

- 3) Testimony from the Claimant's ex-husband revealed that he started work at _____ 12/15/2006. He is paid every two weeks. He works 40 hours per week @ \$8.57 an hour. He received one check in December.
- 4) The Department's evidence shows that the Claimant and her ex-husband are the only ones in the Assistance Group (AG). The gross income was calculated as \$8.57 times 40 hours equals \$342.80 per week. \$342.80 times 4.3 equals \$1470.04. The gross (130% FPL) income limit is \$1430 for a two person AG. The determination was made that the household income was excessive as \$1470 exceeds \$1430. (D-4)
- 5) Testimony revealed that the Claimant is receiving SSI-Related Medicaid based on the fact she has been determined disabled by the Medical Review Team.
- 6) Section 12.15A of the West Virginia Income Maintenance Manual reads in part that disabled means that the individual is unfit to engage in full-time employment due to a physical and/or mental disability. There are several different Food Stamp policies which require a determination of physical and/or mental disability. The way in which the disability is established varies, depending upon the policy for which the determination is being made.....The policies which require a disability determination are listed below, followed by a citation showing the location of the instructions for making such determinations. Elderly or Disabled provision for use of net income test in Section 10.4,C,1. Use item B below only.
- 7) Section 12.15B of the West Virginia Income Maintenance Manual reads in part that disability is established without a physician's statement as follows: 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: RSDI, SSI, Medicaid (incapacity, blindness or disability)....
- 8) Appendix A, Chapter 10 of the West Virginia Income Maintenance Manual shows that the gross income (130% FPL) for an AG of two is \$1430. The net income (100% FPL) is \$1100 for an AG of two. The maximum food stamp allotment for a two-person AG is \$284.
- 9) Section 10.4C #3 of the West Virginia Income Maintenance Manual reads in part that to determine the coupon allotment, find the countable income and the number in the benefit group in Appendix C. One- and two-person AG's who meet the income test or who are categorically eligible automatically receive a \$10 coupon allotment, unless it is a prorated allotment (Appendix D) of \$1 - \$9..... Worker may determine the benefit amount by using the following method. This method is also used by RAPIDS to determine the benefit. 1) Multiply net income by 30%....(Round up). 2) Subtract 30% of net income from the maximum monthly benefit for the AG size.....
- 10) 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:

	No One Elderly Or Disabled	At Least One Person Elderly or Disabled
Shelter/ Utility Equal To Or Less Than Step 9	No further computatio n is needed. The amount from Step 8 is the countable income.	No further computatio n is needed. The amount from Step 8 is the countable income.

Shelter/ Utility Greater Than Step 9.	The amount is excess of 50%, not to exceed the shelter/ utility cap, is deducted to arrive at countable income.	The amount in excess of 50% is deducted, without regard to the shelter/ utility cap, to arrive at countable income.
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Step 11: Compare the countable income to the maximum net income in Appendix
A for the benefit group size.

VIII. CONCLUSIONS OF LAW:

- 1) There are two in the food stamp AG. One individual is disabled by virtue of the fact she is receiving Medicaid based on being found disabled by the Medical Review Team.
- 2) The Department considered the gross allowable income when determining eligibility. Because there is an individual in the AG who meets the definition of a disabled person for food stamps, the net adjusted income should have been calculated. See #6 and #7 above under Findings of Fact.
- 3) The anticipated gross monthly income for the AG is \$1474.04 for January 2007. This is calculated as \$8.57 times 40 hours per week equals \$342.80. For two weeks the gross would be \$685.60. The monthly gross income is \$685.60 times 2.15 equals \$1474.04. The net adjusted income is calculated as follows: \$1474.04 less 20% (Earned Income Deduction) \$294.81 equals \$1179.23; less Standard Deduction of \$134 equals \$1045.23. No shelter/utility deduction was given as these expenses must exceed \$522.62. The State Hearing Officer did not have information regarding the Claimant's shelter/utility expenses. The net adjusted income is \$1045.23. The allowable net adjusted income for an AG of two is \$1100.
- 4) The monthly coupon allotment for an AG of two with net adjusted household income of \$1045.23 is \$10.00. This is calculated as follows: 30% of net income (\$1045.23) equals \$314. \$314 is subtracted from the maximum monthly benefit for an AG of two which is \$284. This is plus \$30. However, policy provides that two-person AG's who meet the income test automatically receive a \$10 coupon allotment, unless it is a prorated allotment.

- 5) The determination made by the Department is incorrect. The gross income test was used instead of the net income test when determining the AG's adjusted income.

IX. DECISION:

It is the finding of the State Hearing Officer that the Department is reversed in the proposal to terminate the claimant's food stamps because the household income is excessive. The Department will recalculate benefits and send proper notification to the Claimant before any action is taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of January, 2007.

**Margaret M. Mann
State Hearing Officer**