



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
P.O. Box 970  
Danville, WV 25053

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

March 12, 2007

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

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 12, 2007. Your hearing request was based on the Department of Health and Human Resources' action 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: When no Assistance Group member is elderly or disabled, the gross income must be equal to or less than the gross income limit listed in Chapter 10, Appendix A (130% of the Federal Poverty Level) for the Assistance Group size to qualify for Food Stamps. (West Virginia Income Maintenance Manual Section 10.4) When a reported change results in a decrease in benefits, the change is effective the following month, if there is time to issue advance notice. If not, the change is effective two (2) months after it occurs. (WV Income Maintenance Manual Section 2.2.C.2)

Based on information submitted at your hearing, your gross household income is excessive for the Food Stamp Program. The Department failed to send proper notification of the proposed adverse action.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate your Food Stamp benefits pending proper notification.

Sincerely,

Cheryl McKinney  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Sheila Napier, Boone DHHR

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

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

**v. Action Number: 07-BOR-571**

**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 12, 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 February 12, 2007 on a timely appeal filed January 9, 2007.

It should be noted that benefits have 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  
Sheila Napier, Boone DHHR Representative

Presiding at the hearing was Cheryl McKinney, 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.

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

West Virginia Income Maintenance Manual Chapters 10.4, Chapter 10, Appendix A and Chapter 12.15B  
WV Income Maintenance Manual Section 2.2.C.2  
WV Income Maintenance Manual Section 6.3.D.1

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

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

- D-1 Notification letter dated December 19, 2006
- D-2 Copies of pay stubs dated July 2006
- D-3 Copy of WV Income Maintenance Manual Appendix A dated 3/06
- D-4 Copy of WV Income Maintenance Manual Appendix A dated 1/07
- D-5 Copy of pay stubs dated November 2006
- D-6 Hearing Summary

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

- 1) The Department completed a review of eligibility for Claimant's food stamp case on August 8, 2006 during which the Claimant reported he had gone to work. The earnings received for the prior 30 days were reported as \$981.12 on July 14, 2006 and \$817.60 on July 31, 2006. (D-2) The Claimant reported he is paid semi-monthly, and gross earnings of \$1798.72 were calculated. The household was found ineligible for food stamps for September, 2006 but eligible for stamps beginning October 2006 due to an increase in the gross allowable income according to Appendix A (D-3, D-4) of the WV Income Maintenance Manual. Food Stamps were issued for the three (3) person household beginning October 2006

- 2) The Claimant later submitted an application for Low Income Energy Assistance and submitted pay stubs for the month of November 2006 (D-5) totaling \$2890.24. The Department updated the income screens in the Claimant's case with the new income and this change in income caused the Claimant to no longer be eligible for food stamps due to excessive gross income. The maximum allowable gross income for a household of three (3) is \$1799.00.
- 3) The Department sent the Claimant a Notice of Decision on December 19, 2006 (D-1), which states, in part:

Action: Your Food Stamps will stop. You will not receive this benefit after December 2006.

Reason: Income is more than the gross income limit for you to receive benefits. Earned income has increased.

- 4) The Claimant testified that although he agrees with the Department's calculation of his earnings, he is mandated to work the overtime. He indicated he was "out of work" for a period of time and fell behind in paying his bills, and this is causing him financial problems as he is trying to catch up on everything. He testified that he pays over \$900.00 a month in child support.

- 5) 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.

- 6) West Virginia Income Maintenance Manual Chapter 10.4, A ,1 and 4 (D-2):

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 may 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.

Once the Worker determines all of the income sources which are to be considered for use, the amount of monthly income is determined as follows, based on the frequency of receipt and whether the amount is stable or fluctuates.

The section indicates that when an individual is paid more often than monthly, the worker should find the average amount for a period and convert it to a monthly amount. It states:

**\*NOTE:** The purpose of finding an average amount of fluctuating income is to even out the highs and lows in the amount of income. The client is not, then, required to report fluctuating income each pay period and the Worker is not required to change income monthly. See Section 2.2,B for Food Stamp reporting requirements. Sometimes the client receives higher benefits than he would if actual income were used and sometimes he receives lower benefits. Therefore, when the Worker has averaged fluctuating income based on the best information available and the client's income does not match the

monthly amount used by the Worker, there is no repayment when the client receives higher benefits and no supplemental issuance when the client receives lower benefits. Should the client report fluctuations in the amount of income, the Worker is only required to recalculate the countable income when, in his judgment, the fluctuation will significantly impact the coupon allotment. All changes reported by the client must be considered, but not necessarily used. Reported changes must be recorded and the Worker must record why the reported income was or was not used.

Conversion of income to a monthly amount is accomplished by multiplying an actual or average amount as follows:

- Weekly amount x 4.3
- Bi-weekly amount (every 2 weeks) x 2.15
- Semi-monthly (twice/month) x 2

Proration of income to determine a monthly amount is accomplished by dividing the amount received by the number of time periods it is intended to cover as follows:

- Bi-monthly amount (2 months)  $\div 2$
- Quarterly amount (3 months)  $\div 3$
- Semi-annual amount (twice/year)  $\div 6$
- Annual amount  $\div 12$
- 6-week amount  $\div 6$  and converted to monthly amount by using x 4.3
- 8-week amount  $\div 8$  and converted to monthly amount by using x 4.3

- 7) West Virginia Income Maintenance Manual Section 12.15B provides a list of sources through which a disabled individual must receive benefits in order to qualify to use the net income test for Food Stamps.
- 8) WV Income Maintenance Manual Section 2.2.C.2 states in pertinent part:

#### Decrease in Benefits

When the reported change results in a decrease in benefits, the change is effective the following month, if there is time to issue advance notice. If not, the change is effective two (2) months after it occurs. No claim is established unless the client failed to report in a timely manner and this is the only reason the change could not be made within 13 days.

- 9) WV Income Maintenance Manual Section 6.3.D.1 states in pertinent part:

**Situations Requiring Advance Notice**

A client must receive advance notice in all situations involving adverse actions except those described in Section 6.3, C.2. The advance notice requirement is that notification be mailed to the client at least 13 days prior to the first day of the month in which the benefits are affected. The date on the notice must be the date it is mailed.

**VIII. CONCLUSIONS OF LAW:**

- 1) The Claimant completed a Low Income Energy Assistance application in December 2006, at which time his household income was updated for all programs and deemed excessive for the Food Stamp Program. Household income was calculated as follows:

Pay stubs for the Claimant	November 14, 2006	\$1499.43
	November 30, 2006	\$1390.81

***Average semi-monthly gross income for Claimant is \$1445.12 x semi-monthly multiplier of 2 = \$2890.24.***

- 2) For Food Stamp purposes, gross income is considered when no Assistance Group members are elderly or disabled. Policy dictates that the maximum allowable gross income for a three-person benefit group is \$1799.00.
- 3) The Claimant does not receive disability benefits so he is ineligible to use the net income test in determining eligibility for Food Stamps.
- 4) The notification letter date December 19, 2006 was improper in that it only allowed 12 days advance notice.

**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 pending proper notification.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 12th Day of March 2007.**

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**Cheryl McKinney  
State Hearing Officer**