



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 16, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 6, 2007. Your hearing request was based on the Department of Health and Human Resources' action to close your Food Stamp Program case effective January 31, 2007.

In arriving at a decision, the State Hearings 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. One of these regulations specifies in order to be eligible for the Food Stamp Program, the total countable assets cannot exceed \$2,000. [WV Income Maintenance Manual Section 11.3 and 7 CFR 273.8]

The information which was submitted at your hearing revealed that you are prevented from selling or otherwise disposing of the real property valued at \$30,000 due to back taxes for which you have no ability to pay.

It is the decision of the State Hearings Officer to reverse the action of the Department to close your Food Stamp Program case effective January 31, 2007.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Misti Broyles, Dept. Hearing Rep.

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

_____,

Claimant,

v.

Action Number: 07-BOR-771

**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 March 14, 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 March 6, 2007 on a timely appeal, filed February 1, 2007.

It should be noted that benefits were discontinued effective January 31, 2007 pending the hearing decision.

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.

Misti Broyles, ESW, DHHR

Presiding at the Hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the agency was correct in the action to close the claimant's Food Stamp case effective January 31, 2007 based on excessive countable assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 11.2, 11.3, 11.4.
Federal Food Stamp Regulations 7 CFR 273.8.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- Exhibit A Copy of case summary.
- Exhibit B Copy of notification letter dated 1-26-07 (3 pages).
- Exhibit C Copy of case comments, summary of feeds, picture of property (8 pages).
- Exhibit D Copy of WV Income Maintenance Manual Section 11.3.
- Exhibit E Copy of letter to claimant 3-14-07 after research about real property.

Claimant's Exhibits:

CI-1 Copy of letter from [REDACTED] Sheriff, to Glen Gainer, Auditor.

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of Food Stamps when her case was due for review and the claimant reapplied for Food Stamps on 12-26-06.
- 2) The case was pended for verifications which were received on 12-27-06 and the case was sent to a case reader for review and approval and the case reader discovered real property in the claimant's name on 1-4-07 and the claimant was questioned about the asset and explained that the house and property were inherited from her grandfather and she lived in the house for 1-2 years and moved out as she was unable to afford to live there or pay the taxes.
- 3) The case was again pended for verification of access to the property, value of the property, and taxes owed on the property and on 1-29-07, the claimant brought a statement from the courthouse verifying the amount of back taxes owed but the Department determined that the statement did not show that the claimant did not have access to the property or that she could not dispose of it. The Department and the claimant estimated the value at \$30,000 and the Food Stamp case was denied due to excessive countable assets.

- 4) Notification of denial of the Food Stamp application was sent on 1-26-07 (Exhibit #B).
- 5) Testimony from the Department purports that the claimant was unable to obtain anything showing the property was inaccessible to her and that the Department did not attempt to contact the Sheriff Department or anyone else to obtain information about accessibility.
- 6) Testimony from the claimant purports that she was informed that the property will be auctioned in April, 2007, that the county clerk told her there are liens on the property, and that she tried to get something from the county clerk but was unable to do so.
- 7) West Virginia Income Maintenance Manual ' 11.3 states, in part:

“To be eligible for Food Stamps, the total amount of countable assets cannot exceed \$2,000. When at least one AG member is age 60 or over or is disabled according to Section 12.15 B, regardless of the size of the AG, the asset limit is \$3,000.”
- 8) WV Income Maintenance Manual ' 11.2 D states, in part:

“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 include, 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.”
- 9) The area of dispute involves whether the real property owned by the claimant is available to the claimant for disposition. The State Hearing Officer ordered the Department, upon agreement from the claimant, to contact the [REDACTED] County Clerk's Office or the [REDACTED] County Sheriff's Office to determine accessibility of the asset to the claimant and allowed one (1) week for the Department to research the issue. On 3-14-07, the Department provided the State Hearing Officer with a copy of a letter to the claimant stating that, after researching through the [REDACTED] County Courthouse, Sheriff's Tax Department, County Clerk's book of deeds and wills, and the State Auditor's Land Commission, the Department determined that the deed was listed in the claimant's name and that she legally owned the property to do whatever she wanted to do with it. The Department maintained its position that the asset was available to the claimant for disposition. It is the finding of the State Hearing Officer that the claimant has no current access to the asset due to inability to pay the real property taxes, which are delinquent and totaled, along with other fees, \$3,576.35 as of January 31, 2007.. The State Hearing Officer finds that Exhibit #CI-1 shows that the Sheriff of [REDACTED] County requested the State of WV through the Auditor's Office to redeem the property of the claimant and that the State of WV has control of the real property until either the claimant pays the back taxes or it is sold at auction. In addition, the Department did not

show that the claimant has the financial ability to pay the delinquent taxes in order to be able to sell or dispose of the property. If the claimant pays the back taxes, then the real property would become an accessible asset to her. Short of that occurring, the State Hearing Officer finds that the claimant does not have current access to the asset as she cannot sell or dispose of the asset without first paying the delinquent taxes which the Department did not show she was able to do.

VIII. CONCLUSIONS OF LAW:

- 1) Regulations in WV Income Maintenance Manual Section 11.2 D state that to be considered an asset, the item must be owned by or available to the client and available for disposition. That section also states that if the client cannot legally dispose of the asset, it is not his asset. Examples of inaccessibility included, but were not limited to, legal proceedings such as probate, liens, etc. While there was no concrete evidence of a lien on the real property, there was sufficient evidence provided to show that legal proceedings have taken place as the property was placed in the possession of the State Auditor's Office and the claimant cannot dispose of the property without first paying the delinquent taxes. The claimant does not have the means to pay the delinquent taxes and cannot currently dispose of the asset.
- 2) Regulations in WV Income Maintenance Manual Section 11.2 D state that the examples of inaccessibility were not limited to those listed, i.e., probate, liens, etc. The claimant's situation qualifies as an example of inaccessibility of an asset as she does not have the ability to pay the delinquent taxes in order to dispose of the asset.

IX. DECISION:

It is the ruling of this Hearing Officer to reverse the action of the Department to close the Food Stamp Program case. Provided all other eligibility factors are met, corrective Food Stamp issuance will be provided to the claimant beginning with February, 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of March, 2007.

**Thomas M. Smith
State Hearing Officer**