



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

June 21, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 9, 2007. Your hearing request was based on the Department of Health and Human Resources' action to reduce your monthly food stamp coupon allotment.

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 unearned income, coupon allotments are calculated by 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 net countable income was calculated incorrectly.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to reduce your monthly food stamp coupon allotment. The Department is also directed to reinstate food stamps to the previous level for the months preceding this hearing decision due to the claimant's request for continued benefits.

Sincerely,

Cheryl McKinney
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Tonda Griffith, [REDACTED] DHHR

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

Claimant,

Action Number: 07-BOR-859

**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 May 9, 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 May 9, 2007 on a timely appeal, filed February 15, 2007.

It should be noted here that the Claimant's food stamps were not continued pending this 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
Tonda Griffith, Department Hearing Representative

Elden Belcher, Economic Service Supervisor

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 is correct in the decision to reduce the claimant's food stamp coupon allotment.

V. APPLICABLE POLICY:

Sections 9.1A, 10.4, Chapter 10 Appendix C, Chapter 10 Appendix A of the West Virginia Income Maintenance Manual
7 CFR 273.9, 7 CFR 273.10 and 7 CFR 273.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notification letter dated February 21, 2007
- D-2 Overpayment summary from BEP via Rapids
- D-3 BEP benefit payment history sheet
- D-4 Copy of IGBR29 Hearing request form dated 2-15-07
- D-5 Copies of case comments from October 23, 2006 through February 20, 2007
- D-6 Worker's personal notes
- D-7 Unemployment Compensation detail screen
- D-8 Department's summary
- D-9 Department's list of evidence

Claimant's Exhibits:

- C-1 Copy of Workforce WV notice of deduction of previous overpayment

VII. FINDINGS OF FACT:

- 1) The Department sent the Claimant a notification letter (D-1) dated February 21, 2007 indicating that his food stamps would decrease from \$155.00 to \$41.00 effective February 1, 2007. The reason given for the decrease was an increase in income.
- 2) The Department became aware that the Claimant was eligible for unearned income from Bureau of Employment Programs (D-3) in the amount of \$119.00 weekly. The monthly amount of this income is \$511.70. The Department entered this income into the computer which generated the above mentioned notification letter indicating a decrease in food stamp coupon allotment. The Claimant provided proof that he was not

receiving this income due to an overpayment.(C-1) The Claimant was receiving \$0.00 due to \$108.00 weekly being held for the BEP overpayment and \$11.00 weekly being withheld for Child Support. However, the Department determined that this income must be counted as the cause of the overpayment was due to client error.

- 3) The Department indicated that a BEP representative indicated the reason for the overpayment was due to the Claimant failing to accurately predict his income for new employment. The Department presented no documentation or testimony to show the overpayment was caused by intentional misrepresentation. The Claimant testified that he did not know how much to tell them he was to earn, and he felt that due to the fact that his son uses his social security number at times for employment purposes it might have shown in their system he had more earnings that he actually had earned. He did not report this to them.
- 4) The Claimant testified that he disagreed with this income being counted against him because he did not receive any of it. He indicated he had asked for a hearing three times before being granted one and had asked that his benefits continue. The Department did not continue benefits pending the outcome of this hearing. Several workers representing the Department worked on this case in the recent past. The IGBR29 (D-4) does not indicate whether benefits were requested to be continued, however, case comments (D-5) dated February 15, 2007 document that the Claimant did in fact ask that his food stamp benefits continue unaffected until the outcome of the hearing.
- 5) WV Income Maintenance Manual Section 10.4C.12.b states in pertinent part:

Withheld Income

b. From Unearned Income

(1) Intentional Misrepresentation

Treatment of unearned income depends on the reason it is being withheld and the government program, if any, involved. When a client's benefits under a federal or State means-tested program are reduced, due to the client's intentional misrepresentation, the amount being recouped from current benefits is counted as income. Means-tested programs include, but are not limited to, WV Works, SSI, HUD and PELL. Any other recoupment is not counted.

When intentional misrepresentation cannot be documented by the means-tested program, the income is not counted. The Worker must accept the determination of the program which was reduced, suspended or terminated, as the final authority for the determination of intentional misrepresentation. If the determination is not specifically identified and documented by the other program, the policy in this section is not applied. The

Worker must not make a judgment about whether or not the client's actions constitute intentional misrepresentation.

If the Worker is unable to obtain information from another program outside DHHR, the policy in this section must not be applied. The Worker must record efforts to obtain such information, with copies of appropriate correspondence, if any filed in the case record. This is necessary to avoid QA errors for non-compliance with the policy.

- 6) 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.

- 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:

	<p>No One Elderly</p> <p>Or Disabled</p>	<p>At Least One Person Elderly or Disabled</p>
<p>Shelter/ Utility</p> <p>Equal To Or Less Than Step 9</p>	<p>No further computatio n is needed. The amount from Step 8 is the countable income.</p>	<p>No further computatio n 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 Department documented the fact that the Claimant was entitled to receive \$511.70 monthly unemployment benefits, and that BEP was withholding \$108.00 weekly due to an overpayment of benefits. Sufficient documentation exists to show that the error was caused by the claimant's inaccurate anticipation of earnings from a new job; however, not enough documentation exists to determine if the overpayment was caused due to an intentional misrepresentation on the Claimant's part. Policy is clear that the Department

must document extensively to show that an intentional misrepresentation has occurred. The documentation presented by the Department during the hearing was vague and only convinced me of the fact that the error occurred because of the claimant's inaccurate report of anticipated earnings from a new job. The Department is obligated to thoroughly document an intentional misrepresentation before counting the income in determining the Claimant's food stamp entitlement, and has failed to do so.

- 2) Evidence clearly shows that the claimant requested continued benefits pending the outcome of this hearing. The Department failed to continue the claimant's food stamps at the previous level.

IX. DECISION:

It is the finding of the State Hearing Officer that the Department is **reversed** in the decision to reduce the claimant's food stamps. The income from BEP should not have been counted as available income because the Department failed to adequately document if the overpayment was caused by intentional misrepresentation. The Department is directed to reinstate the claimant's food stamps to the previous level for the months preceding this hearing decision.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of June 2007.

**Cheryl McKinney
State Hearing Officer**