



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 28, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 19, 2008. Your hearing request was based on the Department of Health and Human Resources' action to terminate your Food Stamp benefits due to excessive assets.

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: Maximum allowable assets for the Food Stamp Program are \$2,000, or \$3,000 when at least one Assistance Group member is 60 or older or disabled. (West Virginia Income Maintenance Manual Sections 11.3).

Information submitted at your hearing reveals that your household assets exceed the maximum allowable limit of \$2,000 for the Food Stamp Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate your Food Stamp benefits.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Jim Cox, ESS, DHHR

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

_____,
Claimant,

v.

Action Number: 08-BOR-1247

**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 28, 2008 for _____. The 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 19, 2008 on a timely appeal filed April 7, 2008.

II. PROGRAM PURPOSE:

The Food Stamp Program 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
_____, Claimant's aunt
Jim Cox, Economic Service Supervisor, DHHR
Levi Elza, Economic Service Worker, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 Department took the correct action to terminate the Claimant's Food Stamp benefits due to excessive assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 11.2, D, 11.3, 11.4 and 11.5, A, 3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Fair Hearing Request Form and verification request
- D-2 Quality Control documentation
- D-3 Letter from _____ dated March 13, 2008
- D-4 West Virginia Income Maintenance Manual Sections 11.3 and 11.4

Claimant's Exhibits:

- C-1 Statement written by _____
- C-2 None submitted
- C-3 Certified letter verification

VII. FINDINGS OF FACT:

- 1) On March 5, 2008, the [REDACTED] County DHHR Office received a Notice of Potential Error (D-2) from the Department's Quality Control Unit which indicates that the Claimant is ineligible for Food Stamps due to excessive assets. The notice and supporting documentation states that the Quality Control Unit discovered the Claimant has access to a jointly-owned savings account at BB&T financial institution. The balance in the account was \$8,446.12 at the time of the review and the account is jointly owned with _____, the Claimant's aunt. A notation at the bottom of the documentation- written by the Quality Control Reviewer- indicates that the worker verified the account has been established in the name of _____ or _____.

- 2) The Department sent the Claimant a verification checklist (D-1) dated March 5, 2008 requesting that she provide a bank statement dated November 2007 (the month of the last deposit) to verify the amount of money in the account.
- 3) The Economic Service Supervisor spoke to the Claimant via telephone and the Claimant contended she had no knowledge of the account and that the account belongs to her aunt. In addition, the supervisor spoke to the Claimant's aunt who stated that the account was set up for the Claimant to receive the money upon her (the aunt's) death.
- 4) The Claimant's aunt provided a notarized statement (D-3) indicating that the Claimant had no prior knowledge of the savings account. The Claimant's aunt contended that the Claimant has never possessed documentation concerning the account and that all associated Federal taxes pertaining to the account are assigned to the aunt's social security number. She stated that she had included the Claimant on the account for the sole purpose of handling her (the aunt's) personal affairs in the event of her untimely death or incapacitation.
- 5) The Economic Service Supervisor testified that a copy of the statement was forwarded to the Quality Control Director. He was informed that Quality Control completed a follow-up check with BB&T to verify whether the account was established as "payable upon death" or a trust fund, and whether the account was accessible to both joint owners. The supervisor was informed that the account was accessible to both parties.
- 6) The Claimant testified that she had no prior knowledge of the account and does not consider the account her own. The Claimant's aunt testified that she had established the account when the Claimant was still a minor so that someone would have access to the money in the event of her death. She testified that she is single and has no children to handle her affairs, and that she had never informed the Claimant of the account's existence. The Claimant's aunt testified that she has made an honest effort to address the issue and believes that her privacy has been violated. She did not wish to provide further documentation concerning the account.
- 7) West Virginia Income Maintenance Manual Section 11.3 (D-4) states that maximum allowable assets for the Food Stamp Program are \$2,000. The asset maximum increases to \$3,000 when at least one Assistance Group member is 60 or older or disabled.
- 8) West Virginia Income Maintenance Manual Section 11.4 (D-4) states that bank accounts, unless otherwise excluded, are counted as assets for the Food Stamp Program.
- 9) West Virginia Income Maintenance Manual Section 11.5, A, 3 states:

3. Jointly Owned Assets

The treatment of jointly owned assets becomes significant when all the joint owners are not included in the AG. An asset is considered jointly owned when the client has an investment in it or his name appears on it. Also see Section 11.2, D.

a. All Joint Owners Are In The AG

When all joint owners are in the AG, the total equity is counted, unless one of the joint owners is a WV WORKS or SSI recipient. See item 4 below.

b. All Joint Owners Are Not In The AG

If all of the joint owners are not in the AG, the asset owned jointly is considered available in its entirety to the AG, unless it can be demonstrated that such assets are inaccessible. If the AG can demonstrate that it has access to only a portion of the asset, the value of that portion is an asset.

10) West Virginia Income Maintenance Manual Section 11.2, D states:

D. ACCESSIBILITY OF ASSETS

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 order.

- Irrevocable agreements: For WV WORKS and Medicaid, transfers to an irrevocable agreement or trust may result in a penalty. See Section 11.7

- Joint ownership and the meaning of such ownership may be indicated in one of the following ways:

- **AND** - Joint ownership indicated by “and” between the names of the owners. Unless there is evidence to the contrary, each owner is assumed to own an equal, fractional share of the jointly-owned asset.

If the fractional share of the asset is not available to either owner without the consent of the other, and such consent is withheld, the asset is excluded as being inaccessible. For Food Stamp benefits only, the consent must be withheld by an individual(s)

who is not a member of the client's AG, in order for the asset to be considered inaccessible.

- **OR** - Joint ownership indicated by "or" between the names of the owners. The asset is available to each owner in its entirety.

- **AND/OR** - Joint ownership indicated by "and/or" between the names of the owners. The asset is available to each owner in its entirety.

VIII. CONCLUSIONS OF LAW:

- 1) Policy reveals that maximum allowable assets for the Food Stamp Program are \$2,000, or \$3,000 when at least one Assistance Group member is 60 or older or disabled.
- 2) The Department's Quality Control Unit discovered that the Claimant is the joint owner of a bank account with a balance of more than \$8,000.
- 3) Information recorded by the Quality Control Unit indicates that the bank account was established in the names of _____ *or* _____ and the Claimant supplied no verification to the contrary.
- 4) The Claimant and her aunt provided credible testimony indicating that the Claimant was unaware of the account's existence and the account was set up jointly simply to allow the Claimant access to funds upon the aunt's incapacitation or death. However, policy clearly states that joint ownership indicated by "or" between the names of the owners means that the asset is available to each owner in its entirety. While the Claimant does not consider the bank account as her own asset, the account is legally available to her in its entirety.
- 5) The Department acted correctly in terminating the Claimant's Food Stamp benefits due to excessive assets.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate the Claimant's Food Stamp benefits due to excessive assets.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of May 2008.

**Pamela L. Hinzman
State Hearing Officer**