



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 2, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 22, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal of a repayment of an overissuance of Food Stamps due to unreported rental income.

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: Gross profit from self-employment is the income remaining after deducting any identifiable costs of doing business from the gross income (West Virginia Income Maintenance Manual § 10.4 D).

The information which was submitted at your hearing revealed that your expenses exceeded the income received from rental property making your gross self-employment income after deductions \$0.

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to impose a Food Stamp repayment due to unreported rental income.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Vickie Adkins, Repayment Investigator

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

_____,

Claimant,

v.

Action Number: 08-BOR-1580

**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 September 22, 2008 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 September 22, 2008.

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 (by phone)

_____, Certified Public Accountant (by phone)

Vickie Adkins, Repayment Investigator

Presiding at the Hearing was Kristi Logan, 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's proposal of a repayment of Food Stamps is correct.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 10.4 D

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Benefit Recovery Referral Screen (BVRF) from Rapids Computer System
- D-2 Combined Application Form dated August 24, 2006
- D-3 Rights and Responsibilities Form dated August 24, 2006
- D-4 Food Stamp Claim Determination Form for February 2003 - September 2003
- D-5 Food Stamp Claim Determination Form for June 2005 – November 2005
- D-6 Food Stamp Claim Determination Form for August 2006 – July 2007
- D-7 Case Comments (CMCC) from Rapids Computer System dated April 29, 2004
- D-8 Case Comments (CMCC) from Rapids Computer System dated August 6, 2007
- D-9 West Virginia Income Maintenance Manual § 20.2
- D-10 Notification Letter dated November 1, 2007
- D-11 West Virginia Income Maintenance Manual § 1.2 E
- D-12 West Virginia Income Maintenance Manual § 10.3 III

Claimants' Exhibits:

- C-1 [REDACTED] County Housing Authority Contract for August 2006 – August 2007
- C-2 [REDACTED] County Housing Authority Contract for August 2007 – August 2008

VII. FINDINGS OF FACT:

- 1) Repayment Investigator Vickie Adkins received a referral for a Food Stamp repayment for Claimant in August 2007. The referral stated Claimant had unreported rental income while receiving Food Stamps (D-1).
- 2) Claimant received Food Stamps during three (3) periods; February 2003 – September 2003, July 2005 - November 2005 and August 2006 – August 2007. Ms. Adkins verified by tax documents that Claimant owns twenty (20) acres in the [REDACTED] District as well the mobile home and the property where she resides on [REDACTED] in [REDACTED] WV. Claimant told a caseworker on April 29, 2004 that she rented the house on her non-homestead property for \$475 a month (D-7). Claimant told another

caseworker on August 6, 2007 that rent for the house was \$400 a month and she also received \$250 a month rent from her mother who lived with her (D-8).

- 3) Ms. Adkins attempted several times to determine how long Claimant had been receiving rental income from her non-homestead property and receiving rent from her mother. Claimant was uncooperative in providing this information. A Food Stamp repayment claim for \$2813 was established against her, which is the sum of Claimant's Food Stamp allotment during the three (3) time periods in which Claimant received Food Stamps.
- 4) Claimant testified that she purchased the non-homestead property in 2002. No one lived in the house from 2002 – 2003. Claimant stated the house was unlivable at that time and needed repairs. She tried to rent the house for \$475 a month in 2004 but could find no one willing to pay that much for it. Her son lived in the house in 2005 but she did not charge him rent.

Claimant signed a rental contract with ██████████ County Housing Authority (HUD) to rent the house on August 18, 2006. From August 2006 - August 1, 2007 she received \$408 a month rent from HUD and \$74 a month rent directly from the tenants (C-1).

Effective August 1, 2007 - August 1, 2008, Claimant received \$404 rent a month from HUD and \$78 rent a month directly from the tenant. Claimant stated the rental property has been occupied continuously since signing on with HUD in August 2006 (C-2).

- 5) Claimant stated her mother has lived with her for nine (9) years. In August 2007 her mother started giving her \$250 a month. She did not consider this rent, but money for groceries. She didn't start asking for money from her mother until August 2007 when she was going through financial difficulties.
- 6) Claimant's accountant, _____, testified to the years she prepared Claimant's tax returns. Claimant did not report any rental income for 2003. Someone else prepared her taxes in 2004 and 2005. In 2006, Claimant reported rental income of \$1816 and claimed no expenses.

For Claimant's 2007 tax returns, she reported \$4876 rental income and the following expenses: \$700 homeowners' insurance, \$70 in legal fees, \$51.60 in mortgage interest, \$200 in repairs and \$594 for property taxes. Claimant's mortgage on the rental property is \$516 a month. Claimant has been reporting a loss of income on her taxes since renting the property.

_____ stated when she prepared Claimant's taxes; she was unaware of Claimant receiving payments from her tenants and had only counted the rental income received directly from HUD. _____ stated Claimant's tax returns would be amended to reflect the additional income.

- 7) West Virginia Income Maintenance Manual § 10.4 D(4)b(1) states:

Gross profit from self-employment is the income remaining after deducting any identifiable costs of doing business from the gross income.

(1) Deductions

Examples of allowable deductions include, but are not limited to:

- Employee labor costs, including wages paid to an Assistance Group member and any salary the client pays himself
- Stock and supplies
- Raw material
- Seed
- Fertilizers
- Repair and maintenance of machinery and/or property
- Cost of rental space used for conducting the business
- Payments on the principal and interest of the purchase price of income-producing real estate and capital assets, equipment, machinery and other durable goods
- Insurance premiums and taxes paid on the business and income-producing property
- The utilities, principal, interest and taxes for the client's residence which is used in part to produce income
- Advertising costs
- Utilities
- Office expenses, such as stamps, stationery, etc.
- Legal costs
- Net Loss from self-employment farming

VIII. CONCLUSIONS OF LAW:

- 1) According to Claimant's testimony, she did not start receiving any income from her rental property until August 2006 when she signed a contract with HUD. The Department failed to produce any evidence to contradict this testimony. The Department also failed to produce any evidence that Claimant had been receiving income from her mother prior to August 2007 when she reported it. Claimant will not be responsible for a repayment of Food Stamps for time periods February 2003 – September 2003 or July 2005 – November 2005.
- 2) Per policy, the payments on the principal and interest of the purchase price of income producing real estate are an allowable deduction from rental income. Claimant's mortgage on the rental property alone exceeds the monthly income it produces. Claimant will not be responsible for a repayment for the time period of August 2006 – July 2007.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's decision to impose a Food Stamp repayment of \$2813 due to unreported rental income. However, this does not preclude the establishment of a claim based on excessive assets.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd Day of October, 2008.

Kristi Logan
State Hearing Officer