



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

March 7, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 5, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your Food Stamps.

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. 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). Regulations also state individuals convicted of a felony offense which occurred on or after August 23, 1996 which involved possession, use or distribution of a controlled substance as defined by section 802(6) of the Controlled Substance Act are permanently excluded from participation in the Food Stamp Program. (West Virginia Income Maintenance Manual Section 9.1 and 7 CFR ' 273.11(m) - Code of Federal Regulations) The disqualified individual's income, however, still counts as though he were a member of the Assistance Group (West Virginia Income Maintenance Manual Section 10.4).

The information which was submitted at your hearing revealed that you were convicted of a drug felony in 2001 and are therefore permanently disqualified from participation in the Food Stamp Program. The gross income of your Assistance Group exceeds the limits for its size.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to terminate your Food Stamps.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review  
\_\_\_\_\_, Claimant  
Gayla Adkins, Family Support Supervisor, DHHR

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

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**Claimant**

**v.**

**Action Number: 07-BOR-551**

**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 5, 2008 for \_\_\_\_\_ Sr. 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 5, 2008 on a timely appeal, filed December 27, 2007.

It should be noted here that the claimant's benefits have been continued pending a 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

Gayla Adkins, Family Support Supervisor, DHHR  
Randy Sue Adkins, Family Support Specialist, DHHR

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 to Department's decision is correct to terminate Claimant's Food Stamps.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Sections 9.1 and 10.4  
7 CFR ' 273.11 - Code of Federal Regulations  
21 U.S.C. 802 & 806

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

**Department's Exhibits:**

- D-1 Notification Letter Dated December 12, 2007
- D-2 Hearing Request Received December 27, 2007
- D-3 Pre-Hearing Conference Appointment Letter for January 2, 2008
- D-4 Form IG-BR-29
- D-5 Hearing Appointment Letter for March 5, 2008
- D-6 West Virginia Income Maintenance Manual Sections 9.1 and 10.4
- D-7 Summary of Department's Case
- D-8 Copy of Unemployment Compensation Pay Stub for Claimant Dated December 26, 2007

**Claimants' Exhibits:**

- C-1 Copy of Unemployment Compensation Check for Claimant Dated December 26, 2007

**VII. FINDINGS OF FACT:**

- 1) Claimant received a notification letter that his Food Stamps would be terminated (D-1). The notification letter reads in part:

Your Food Stamps will stop. You will not receive this benefit after December 2007.

Income is more than the gross income limit for you to receive benefits.

- 2) Evidence from the Department revealed that Claimant began receiving Unemployment Compensation in December 2007 of \$638.00 gross every two weeks. Court-ordered Child Support of \$102.00 is deducted from each check (D-8). Food Stamps had previously been certified based on zero income and the addition of the Unemployment

Compensation caused the Assistance Group to be income ineligible to continue receiving benefits.

- 3) Claimant testified that he had a felony conviction for Conspiracy and Distribution of a Controlled Substance in 2001.

- 4) West Virginia Income Maintenance Manual Section 10.4 C-8 states in part:

When no member of the Assistance Group is elderly or disabled, the gross income must be equal to or less than the Gross Income Limit found in Chapter 10 Appendix A. If the gross income exceeds the amount found in Appendix A, the Assistance Group is ineligible.

- 4) West Virginia Income Maintenance Manual Section 9.1 A-2(g) states in part:

Persons convicted of a felony offense which occurred on or after August 23, 1996 which involved possession, use or distribution of a controlled substance as defined by section 802 (6) of the Controlled Substance Act are permanently disqualified from participating in the Food Stamp Program.

- 5) West Virginia Income Maintenance Manual Section 10.4 D-8(a) states in part:

Income of an individual excluded by law is counted as if he were a member of the Assistance Group.

- 6) West Virginia Income Maintenance Manual Section 10.4 A-4 states in part:

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

Bi-weekly amount x 2.15

## **VIII. CONCLUSIONS OF LAW:**

- 1) Claimant has a felony drug conviction that occurred after August 23, 1996 that permanently disqualifies him from the Food Stamp Program.
- 2) Claimant's gross income from Unemployment Compensation counts in determining the Assistance Group's eligibility. Since Claimant is excluded by law from participation, the Assistance Group will only include Claimant's wife.
- 3) Claimant receives Unemployment Compensation of \$638.00 gross bi-weekly which converts to \$1371.70 monthly. The gross income limit for an Assistance Group of 1 is \$1107.00. Claimant's gross income exceeds the allowable limit for Food Stamps.

**X. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate Claimant's Food Stamps.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 7<sup>th</sup> Day of March, 2008.**

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**Kristi Logan**  
**State Hearing Officer**