



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

April 25, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 20, 2008. Your hearing request was based on the Department of Health and Human Resources' determination of your Food Stamp allotment.

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: Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent. (West Virginia Income Maintenance Manual, Chapter 9.1) Whether the Worker considers income from the prior 30 days, or from a longer period of time, all of the income received from that source during that time period must be considered. (West Virginia Income Maintenance Manual, Chapter 10.4)

The information which was submitted at your hearing revealed that the income and allotment calculations used in determining your Food Stamp allotment were correct.

It is the decision of the State Hearings Officer to **uphold** the action of the Department in determining your Food Stamp allotment.

Sincerely,

Todd Thornton
State Hearings Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Stacy Sizemore, Economic Service Worker

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

Claimant,

Action Number: 07-BOR-641

**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 April 25, 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 February 20, 2008 on a timely appeal, filed January 7, 2008.

It should be noted here that the claimant's benefits have not been continued pending a hearing decision.

II. PROGRAM PURPOSE:

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 Wife
Stacy Sizemore, Economic Service Worker

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided are whether or not the Department was correct to include the Claimant's adult daughter in the Food Stamp Assistance Group (AG) and whether or not the Department was correct in its income calculations for the Claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 9.1
West Virginia Income Maintenance Manual, Chapter 10.3
West Virginia Income Maintenance Manual, Chapter 10.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Combined Application and Review Form (CAF) and Rights and Responsibilities (DFA-RR-1) dated December 18, 2007, and attached verifications
- D-2 RAPIDS EFAD Screen dated January 4, 2008
- D-3 Food Stamp approval letter dated January 7, 2008
- D-4 RAPIDS AFUI Screen updated January 4, 2008
- D-5 RAPIDS AFEI and AFDE Screens updated January 4, 2008
- D-6 RAPIDS AFSC Screens updated December 18, 2007
- D-7 RAPIDS AFMD Screen updated January 4, 2008
- D-8 West Virginia Income Maintenance Manual, Chapters 9.1; 10.3; 10.4

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) On December 18, 2007, the Claimant completed a Food Stamp review (Exhibit D-1) and, after necessary verifications were received, the Department sent an approval notice (Exhibit D-3) on January 7, 2008 stating a monthly benefit amount of \$230.00 in Food Stamps.
- 2) Claimant disputes the Food Stamp amount; specifically, the inclusion of the Claimant's adult daughter and her income in the Food Stamp calculations, the use of gross income as opposed to net income, and the calculation of the income of the Claimant's daughter. The Department contends that the Claimant's adult daughter and her income must be included in calculating the Food Stamp allotment, and that the income amounts and calculations used were correct.

- 3) The Department testified that the Claimant received monthly income of \$1056.50 from Social Security. The Claimant disputed this amount, and stated that the correct amount was \$963.00 monthly. The Department clarified that the gross amount is \$1056.50 monthly, that the \$963.00 monthly amount is the net amount after a Medicare premium of \$93.50 is deducted, and that the gross income amount is used in the Food Stamp calculations.
- 4) Claimant's wife testified that the income of the Claimant's adult daughter was being considered in determining the Food Stamp benefit, but that she and the Claimant do not use their adult daughter's income and do not believe that it should affect their Food Stamp allotment. The Department countered that because of their adult daughter's age, and her presence in the household, she must be included in the Food Stamp Assistance Group and her income must be considered.
- 5) The Claimant stated that the monthly income calculated for his adult daughter is incorrect, but offered no alternate calculation. The Department presented the income verification included with the December 18, 2007 review form (Exhibit D-1), but could not recreate the income calculation during the hearing.
- 6) Income verification was requested by the Department during the December 18, 2007 review (Exhibit D-1). When the Claimant provided this verification on December 26, 2007, pay stubs for the following periods and corresponding gross income amounts were included: November 12, 2007, \$298.38; November 26, 2007, \$284.28; December 10, 2007 \$344.58; and December 24, 2007, \$339.42.
- 7) The Department determined an average amount per period of \$316.66 by taking the sum of the gross income from the November 12, 2007, November 26, 2007, December 10, 2007 and December 24, 2007 pay stubs and dividing that sum by four (4). This average amount per period was converted to a monthly amount of \$680.82 by multiplying by 2.15, because the income was received on a bi-weekly basis.

VIII. CONCLUSIONS OF LAW:

- 1) West Virginia Income Maintenance Manual, Chapter 10.4, C, 2 states, in pertinent part:

“Determining Countable Income...Step 1: Combine monthly **gross** non-excluded earnings and monthly **gross** profit from self-employment...Step 3: Add the **gross** non-excluded unearned income...”
(emphasis added)

The Department's use of gross, as opposed to net income in the Food Stamp calculations is correct.
- 2) West Virginia Income Maintenance Manual, Chapter 9.1, A, 1, b, (2) states, in pertinent part:

“Children Under Age 22, Living With a Parent

Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent.”

Credible testimony from the Department, the Claimant, and the Claimant's wife established that the Claimant's adult daughter was under the age of 22 and residing with the Claimant. The Department was correct to include the Claimant's adult daughter and her income in the Food Stamp allotment determination.

- 3) West Virginia Income Maintenance Manual, Chapter 10.4, A, 2 states, in pertinent part:

“Consideration Of Past Income...

The appropriate time period is determined by counting back 30 days beginning with the calendar day prior to the date of application/redetermination. The income from this 30-day period is the minimum amount of income which must be considered. When, in the Worker's judgment, future income may be more reasonably anticipated by considering the income from a longer period of time, the Worker considers income for the time period he determines to be reasonable. Whether the Worker considers income from the prior 30 days, or from a longer period of time, all of the income received from that source during that time period must be considered. All pay periods during the appropriate time period must be considered and must be consecutive.”

The Department was in compliance with this policy in their calculation of the gross monthly income for the Claimant's adult daughter.

- 4) West Virginia Income Maintenance Manual, Chapter 10.4, A, 4 states, in pertinent part:

“When the frequency of receipt is more often than monthly [and] when the amount fluctuates, find average amount/period and convert to monthly amount...Conversion of income to a monthly amount is accomplished by multiplying an actual or average amount as follows...Bi-weekly amount (every 2 weeks) x 2.15.”

The method used by the Department to determine monthly income was correct according to policy.

IX. DECISION:

It is the decision of the State Hearings Officer to **uphold** the action of the Department to include your daughter in your Food Stamp Assistance Group (AG), and the Department's calculation of your daughter's gross earned income amount of \$680.82, and the Department's use of your gross unearned income in arriving at your benefit amount.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of April, 2008.

Todd Thornton
State Hearings Officer