



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

November 25, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 4, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your Supplemental Nutrition Assistance Program (SNAP) benefits.

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 and benefit levels for the SNAP are based on current policy and regulations. Some of these regulations state that unless certain exemptions are met, otherwise eligible individuals who meet the SNAP definition of a student are ineligible to participate in the Program and may not be a separate AG. Eligibility for SNAP benefits and the benefit amount are based on a determination of countable household income (that income remaining after all appropriate disregards and deductions are applied) and the number of individuals in the SNAP benefit group. (West Virginia Income Maintenance Manual, Chapter 9.1 and 10.4 and 7 CFR 273.5 - Code of Federal Regulations)

The information submitted at your hearing reveals that you no longer meet the student exemption criteria for participation in the SNAP. As a result, the Department was correct to remove you from the assistance group and reduce your SNAP benefits.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in reducing your SNAP benefits from \$526 to \$237 per month effective November 1, 2009.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Michelle M. Miller, ESW, DHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR-2088

**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 November 25, 2009 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 via videoconference technology on November 4, 2009 on a timely appeal filed October 15, 2009.

II. PROGRAM PURPOSE:

The purpose of SNAP 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
Michelle M. Miller, ESW, DHHR

Presiding at the hearing was Thomas E. Arnett, 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 was correct in its action to reduce the Claimant's SNAP benefits effective November 2009.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapters 9.1, 10.4 and Appendix C.
7 CFR §273.1, 7 CFR §273.5, 7 CFR §273.9 & 7 CFR §273.10 - Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV Income Maintenance Manual, Chapter 9.1 (Student eligibility policy for SNAP)
- D-2 Notice of Decision dated October 2, 2009
- D-3 Correspondence from [REDACTED] dated October 20, 2009
- *D-4a Correspondence from the Division of Rehabilitation Services dated November 4, 2009
- *D-4b Correspondence from [REDACTED] dated November 12, 2009

* Indicates information was received subsequent to the hearing.

VII. FINDINGS OF FACT:

- 1) On or about October 2, 2009 the Claimant was notified via a Notice of Decision (D-2) that her SNAP benefits would be reduced from \$526 to \$237 per month effective November 1, 2009.
- 2) The Department presented evidence to indicate the Claimant's SNAP benefits were reduced effective November 1, 2009 when the Claimant was removed from the SNAP assistance group (AG) due to the determination she is now an ineligible student. The Department noted that the Claimant was previously eligible to be included in the SNAP AG because she met one of the exemptions for student participation - children under 12. Because the Claimant no longer has children under the age of 12, and she is not meeting any of the other student exemption provisions in policy, the Claimant is no longer eligible to receive SNAP benefits and cannot be included in the SNAP AG.
- 3) The Claimant did not refute the evidence presented by the Department but indicated that she should be considered an eligible student based on her disability. The Claimant indicated that she is attending West Virginia Northern Community College through the Division of Rehabilitation Services.

- 4) The Department's representative indicated that she was not aware of any disability claims made by the Claimant but would be willing to consider verification provided to see if the exemption could be applied to SNAP policy. As agreed on the record, the Claimant was to provide verification of her disability on or before November 16, 2009.
- 5) On November 4, 2009, correspondence (Exhibit D-4a) was received via facsimile from [REDACTED] West Virginia Department of Education and the Arts, Division of Rehabilitation Services. This correspondence states, in pertinent part:

This letter is in regards to -----. ----- applied for services through the West Virginia Division of Rehabilitation Services on May 26, 2009. She was accepted as a client on July 9, 2009 due to a back injury. She enrolled at West Virginia [REDACTED] Community College in Fall 2009 and is currently a full time student.

- 6) In response to the Claimant's verification that she was attending college through the WV Division of Rehabilitation Services, Michelle Miller provided a written response which has been identified as Exhibit 4b. In this document, Ms. Miller states, in pertinent part:

Per Economic Service manual [sic] section 9.1f to be exempt from student policy the student must be "physically or mentally disabled."

According to Manual Section 12.15 the Division of Vocational Rehabilitation is not one of the agencies listed which verify determination of disability. Those listed are Social Security, Veterans Association, Workers' Compensation, sick pay from an employer etc – not Vocational Rehabilitation. A Doctor's [sic] statement could also be used to substantiate disability.

- 7) WV Income Maintenance Manual, Chapter 10.4 contains policy regarding income disregards and deductions, and to computation of and eligibility for Food Stamp (SNAP) benefits. This section of policy indicates that the benefit amount is based on the countable monthly income and number in the assistance group (AG).
- 8) Policy found in the WV Income Maintenance Manual, Chapter 9.1, A.2.f states that unless certain exemptions are met, otherwise eligible individuals who meet the SNAP definition of a student are ineligible to participate in the Program and may not be a separate AG. Among the exemptions permitted in the SNAP student policy are - Physically or mentally disabled (See Section 12.15), and if the student is a single parent, regardless of marital status, and responsible for an AG member under age 12.

- 9) WV Income Maintenance Manual, Chapter 12.15 indicates that a disability determination is required in order for a student to qualify for SNAP benefits based on a disability. This policy goes on to provide example of when a disability can be established without a physician's statement and states:

The individual receives benefits from a governmental or private source, and these benefits are based on his own illness, injury or disability.

This includes, but is not limited to: RSDI, SSI, Workers' Compensation, Black Lung, Veteran's Administration, private insurance or sickness benefits, Medicaid based on incapacity, blindness or disability, including, but not limited to: SSI-related, M-WIN, HCB Waiver, MR/DD Waiver and CDCS, etc. If receipt of any of these benefits do not clearly indicate disability, such as a low percentage disability for VA benefits, a physician's statement may still be required {Emphasis Added}.

VIII. CONCLUSIONS OF LAW:

- 1) Pursuant to SNAP policy and the matter for which the appeal was filed, the Claimant qualifies as a full-time student and the Claimant's youngest child, who is also included in the AG, has reached the age of 12. On the basis of these undisputed facts, the Claimant was correctly removed from the SNAP AG resulting in a reduction in her SNAP benefit amount effective November 2009.
- 2) During the course of the hearing, the Claimant disclosed she was attending college through the Department of Rehabilitative Services based on a disability. As a courtesy, the Department indicated that if the Claimant's disability could be verified, the Claimant's student exemption for SNAP eligibility would be revisited. The Department, upon consideration of the information provided, and the applicable policy, has determined that a physician's statement of disability will still be required. Whereas policy authorizes the Department this discretion, the Department's position must be affirmed.
- 3) Based on the evidence presented at the hearing, the Department has followed proper procedure in its action to reduce the Claimant's SNAP benefits effective November 2009.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department in reducing the Claimant's SNAP benefits effective November 1, 2009.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 25th Day of November, 2009.

**Thomas E. Arnett
State Hearing Officer**