



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street, West  
Charleston, WV 25313

Joe Manchin III  
Governor

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

December 3, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 3, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Supplemental Nutrition Assistance Program (SNAP) eligibility for the period of July 1, 2009 through September 30, 2009.

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 SNAP are based on current policy and regulations. Some of these regulations state that a group of individuals who live together, and for whom food is customarily purchased and prepared together, is an AG. Customarily is used to mean over 50% of meals on a monthly basis. The income group includes all AG members and all individuals who live with the AG and would otherwise be included in the AG if not ineligible, disqualified or excluded by law. (WV Income Maintenance Manual Section 9.1.A and B)

The information submitted at your hearing reveals that your child's father, -----, lived at your residence during the period of July 1, 2009 through September 30, 2009 and shared meals with you at least fifty percent (50%) of the time. His income, when considered for SNAP eligibility, rendered your AG ineligible during that period.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in terminating your SNAP eligibility for the period of July 1, 2009 through September 30, 2009.

Sincerely,

Cheryl Henson, State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Tammy Drumheller, Kanawha DHHR

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-2186**

**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 December 3, 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 on December 3, 2009 on a timely appeal filed June 4, 2009.

It should be noted that the Claimant's SNAP have been continued pending the outcome of this hearing.

**II. PROGRAM PURPOSE:**

The purpose of the Supplemental Nutrition Assistance Program (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 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, representing herself

-----, Claimant's witness

Sheree Smith, Income Maintenance Supervisor, representing the Department

Tammy Drumheller, Front End Fraud Investigator, Department witness  
Christina Saunders, Front End Fraud Investigator, Department witness

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Department was correct in its proposal to terminate the Claimant's SNAP eligibility for the period of July 1, 2009 through September 30, 2009.

#### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual §9.1

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

##### **Department's Exhibits:**

- D-1 Notification letter dated May 26, 2009
- D-2 Employment Data sheet from employer signed May 18, 2009
- D-3 Driver's History Inquiry from DMV records dated December 3, 2009
- D-4 Absent Parent Address information from OSCAR computer system dated April 9, 2009
- D-5 <http://www.whitepages.com/search/ReverseAddress?street=113+vine+st&city&zip=charl...>  
Internet Search of WhitePages.com last updated April 9, 2009
- D-6 Narrative from OSCAR child support computer system dated December 3, 2009

##### **Claimant's Exhibits:**

- C-1 Typed note undated and with signature underneath the name [REDACTED] DPM
- C-2 Copies of letters from the Bureau for Child Support to ----- showing his mailing address on file beginning June 26, 2009

#### **VII. FINDINGS OF FACT:**

- 1) The Claimant was actively receiving SNAP, formerly known as Food Stamps, on May 26, 2009 when the Department mailed her a notification letter which included the following relevant information:

ACTION: Your SNAP benefits will stop. You will not receive this benefit after June 2009.

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

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

Earned income increased.

The following individuals are ineligible. If they are affected by the ABAWD 36 month tracking policy, the tracking period will be stated after their name.

----- FROM 05/2008 TO 04/4011

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-----FROM 05/2009 TO 04/2012

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- 2) The Department's Representative, Sheree Smith, an Income Maintenance Supervisor for the Department, testified that when the Claimant came in for her SNAP review in the spring of 2009 the "Reader Unit" determined that -----address in the Bureau for Child Support's OSCAR computer system was listed as the same as hers. She went on to say that the case was referred to the Front End Fraud Unit (FEFU) for investigation of household composition. She added that FEFU later reported on May 22, 2009 that they had confirmed that ----- was living in the home with the Claimant and had been there for ten (10) years. She reported that the Department, with this information, added ----- to the Claimant's case and the case was found to be ineligible based on excessive income. Ms. Smith went on to say that when the Claimant came into the office in the fall of 2009 for her SNAP review, the Department removed him from the case based on information available at that time. Both parties agree that the months in question for this hearing involve only SNAP eligibility from July 1, 2009 through September 30, 2009.
- 3) The Claimant stated that she does not dispute the income calculations and is agreeable that if --- -- was added to her SNAP case their income would be excessive for the program. She claims that he should not be included because he did not live with her during the period in question.
- 4) The Department's witness, Tammy Drumheller, a Front End Fraud Unit (FEFU) Investigator, testified that she obtained a signed statement from -----'s employer (D-2) which shows that his current address was the same as the Claimant's, -----, ----- as of May 18, 2009. The Claimant stated that she is friends with -----'s employer and that he told her that his address is listed as [REDACTED] however, the Claimant could not produce this witness for cross examination. Ms. Drumheller added that -----'s address was listed as ----- in May 2009 when she contacted the employer and may have been changed since that time.
- 5) Ms. Drumheller also testified that she obtained verification (D-3) that -----'s address is listed with the Department of Motor Vehicles and it matches the [REDACTED] address where the Claimant lives. This evidence (D-3) shows that as of December 3, 2009 his address matches the Claimant's. The date of issuance for the Driver's license is September 15, 2005, however it is not evident as to when this address was entered into their system. The Claimant stated she has no idea why her address is listed on -----'s Driver's license.
- 6) Ms. Drumheller also provided that she verified through the Bureau for Child Support's OSCAR computer system that -----'s address matches the Claimant's. This evidence (D-4) in the form of a document dated April 9, 2009 shows the address for ----- matched the Claimant's. There is information on this document which also shows the address was verified by the Court on October 3, 2006.

- 7) Ms. Drumheller also stated that she verified online from whitepages.com on April 9, 2009 that the address of ----- matches the Claimant's. The evidence (D-5) shows that as of April 9, 2009 the addresses were listed as the same, that being -----, by this online search engine.
- 8) Ms. Drumheller also provided case comments from the Bureau for Child Support's OSCAR computer system for the date of June 4, 2009 which she states (D-6) represents the Child Support Worker's comments on that date. The comments indicate that the Claimant was interviewed on June 4, 2009 by the Child Support worker and informed that her benefits were being canceled because the Non-Caretaker Parent (-----) was living in her home. The comments also provide that the worker explained to the Claimant that she had obtained numerous findings that show the Claimant lived with ----- . The Claimant testified that she recalled having this conversation with the Child Support Worker and she stated that she informed the worker that ----- lived with his mother.
- 9) The Claimant testified that during the period in question ----- was at her house quite frequently, but did not stay the night. She states he lived with his mother at [REDACTED] [REDACTED] This address is approximately ten (10) miles away and a fifteen (15) minute drive from her home. She states that he took the children to ball practice every day and is very active in the children's lives. She later stated that during 2004 and 2005 he "almost" lived with her for a few months because they were getting along very well during that time.
- 10) The Claimant added that during the period in question ----- does ate some meals at her home and often cooked dinner for the children while she was away at work. She states this did not occur more than fifty percent (50%) of the time. She later added that he was there about three (3) days per week.
- 11) The Claimant stated that although ----- has stayed the night with her before, he did not stay overnight during the period in question, July 2009 through September 2009. She also testified that he sees the children every day.
- 12) The Claimant added that she receives mail at her residential address for fifteen (15) different people; however, she submits this does not mean they live at her residence. She stated that she could provide recent mail for ----- as evidence to show he receives mail at his mother's address. The record will be left open until December 11, 2009 to allow the Claimant time to produce this evidence for the record.
- 13) The Claimant provided evidence (C-2) that she purports to be evidence that ----- did not live with her during the period in question. The evidence (C-2) includes letters from the Department's Bureau for Child Support Enforcement which shows that ----- received mail from its Department beginning June 26, 2009 at [REDACTED] This change in address was made after the Claimant spoke with the Child Support Enforcement worker on June 4, 2009 (D-6) and was questioned about why his address matched hers. Another letter (C-2), which appears to be a flyer sent to many individuals, is from a Christian Organization and shows this same address for ----- . It is dated November 2009. Although this evidence shows that as of June 26, 2009 ----- had changed his address on file with the Bureau for Child Support Enforcement, it is not sufficient to show that ----- did not live with the Claimant for the period of time in question.

- 14) The Claimant's witness, -----, states she is a neighbor and friend of the Claimant. She testified that their children play together and she can see the Claimant's home from her front door. Although she has shown that she lives near the Claimant and has knowledge of her personal life, she provided no relevant evidence specific to the period in question.
- 15) The Claimant provided evidence (C-1) in the form of a typed note that she says was written by her employer, [REDACTED] D.P.M., which states that he has been the Claimant's employer for six (6) years and that the only people who reside with her are her four (4) children. He was not available for testimony or cross examination, and the note was not dated; therefore, the period of time being referred to in the note is not clear.
- 16) Ms. Drumheller stated that she spoke with numerous neighbors during her investigation and obtained written statements from several of them; however, the Claimant objected to these written statements being entered, and since the individuals were not available for cross examination their statements were not allowed into evidence.
- 17) Another of the Department's witnesses, Christine Saunders, who functions as a FEFU Investigator, stated that she also spoke with numerous neighbors in the area of the Claimant's home and they all indicated they believed ----- lived with the Claimant. Again, the witnesses were not available for testimony.
- 18) Ms. Drumheller stated that the fact that all of the individuals she spoke with from the Claimant's neighborhood indicated that they knew ----- lived with the Claimant, coupled with the numerous pages of written evidence (D-2 through D-6) obtained during her investigation which showed he was using the Claimant's address as his own with various Agencies, showed that ----- lived with the Claimant for at least the period of time from July 1, 2009 through September 30, 2009.
- 19) The West Virginia Income Maintenance Manual §9.1 A states in pertinent part:

#### SNAP ELIGIBILITY DETERMINATION GROUPS

##### A. THE ASSISTANCE GROUP (AG)

###### 1. Who Must be Included

The SNAP AG must include all eligible individuals who both live together and purchase and prepare their meals together.

The following shows the make-up of a SNAP AG.

###### b. Individuals or Groups of Individuals Living with Others

###### (1) Purchase and Prepare Together

A group of individuals who live together, and for whom food is customarily purchased and prepared together, is an AG.

Customarily is used to mean over 50% of meals on a monthly basis.

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

- 1) Policy provides that SNAP AG's shall include all eligible individuals who both live together and purchase and prepare their meals together. Policy defines "purchase and prepare" to mean a group of individuals who live together, and for whom food is customarily purchased and prepared together. "Customarily" is defined as meaning over fifty percent (50%) of the time.
- 2) The questions for this hearing are whether ----- lived with the Claimant from July 1, 2009 through September 30, 2009 and purchased and prepared meals with her more than fifty percent (50%) of the time.
- 3) The Department produced two witnesses who testified that they had interviewed several of the Claimant's neighbors during the period in question and had been told by all of them that ----- lives with the Claimant. Although little weight is given to this testimony because the witnesses were not produced, the Department also has supplied numerous pieces of written evidence to corroborate that ----- utilized the Claimant's residential address as his own with several Agencies during the period in question. Those written pieces of evidence (D-2, D-3, and D-4) show that ----- was utilizing the Claimant's address as his own with his employer, the Child Support Enforcement Unit, and the Department of Motor Vehicles.
- 4) The Claimant's evidence to support that ----- did not live with her for the period in question includes her own statements along with her friend's testimony. The Claimant's testimony is contradictory in nature and not reliable as some of her statements are inconsistent with others she made. For example, the Claimant at one point stated that ----- was at her home about three (3) days per week, and then later said that he sees the children every day. The testimony of the Claimant's friend is found to be credible; however, her testimony is not sufficient to support that ----- does not live with the Claimant. She testified that he is there often and she has seen him often preparing meals for the children while the Claimant is away; however, none of her testimony was specific to the period in question.
- 5) In the absence of credible evidence to the contrary it has been shown that -----lived with the Claimant during the period in question, often preparing and providing meals to the children. The Department's contention that he lived with the Claimant and shared over fifty percent (50%) of his meals with her has been shown by a preponderance of the evidence. Credible evidence supports that it is more likely than not that this individual lived with the Claimant during the time in question.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the termination of the Claimant's SNAP eligibility for the period of July 1, 2009 through September 30, 2009.

### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 8<sup>th</sup> Day of December 2009,**

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**Cheryl Henson  
State Hearing Officer**