



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

September 2, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 17, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to deny your Supplemental Nutrition Assistance Program (SNAP) application dated May 27, 2010.

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: For SNAP, when at least one AG member is elderly, which is at least age 60, or disabled as specified in Section 12.15,B, eligibility is determined by comparing the countable income to the maximum net monthly income found in Appendix A. There is no gross income test. (West Virginia Department of Health and Human Resources (WVDHHR) Income Maintenance Manual §10.4.C.1)

The information submitted at your hearing reveals that both you and your wife are past sixty (60) years of age and your wife is also disabled. As a result, there is no gross income test for your household. The Department did not disregard the gross income test when considering your eligibility for SNAP, and did not consider all possible deductions for the net income test.

It is the decision of the State Hearing Officer to **remand** the action to deny your May 27, 2010 SNAP application back to the Department for further action. The Department is required to disregard the gross income test, and, after gathering all pertinent information necessary for evaluating all possible deductions, determine your household's net income and whether that income is less than the maximum net income limit for your household of two (2).

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Tera Pendleton, [REDACTED] DHHR

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

-----,

Claimant,

v.

Action Number: 10-BOR-1545

**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 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 August 17, 2010 on a timely appeal filed June 24, 2010.

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

Tera Pendleton, Department representative

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 deny the Claimant's May 27, 2010 SNAP application.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual ' 10.4 and Appendix A

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 May 27, 2010 letter from AARP and Claimant's application
- D-2 Combined Application Form (CAF) and supporting documents dated June 15, 2010
- D-3 Computer Screen printouts from RAPIDS computer system
- D-4 Notification letter dated June 16, 2010
- D-5 West Virginia (WV) Income Maintenance Manual Section 10.4.C
- D-6 WV Income Maintenance Manual Section 10.16

Claimant's Exhibits:

- C-1 Copies of February 2009 checks from Social Security Administration

VII. FINDINGS OF FACT:

- 1) The Claimant submitted an application for SNAP (D-1) to the Department on behalf of himself and his wife on May 27, 2010. The Department then sent him a letter (D-1) informing him that he was scheduled for a face to face interview on June 15, 2010. The letter requested that he bring with him picture identification, verification of income received from April 28, 2010 through June 15, 2010, verification of rent or mortgage, verification of utilities, and a current bank statement.
- 2) The Claimant was subsequently interviewed (D-2) by the Department on June 15, 2010. He reported at that time that he is sixty eight (68) years old and his wife is sixty one (1) years of age and they are both disabled.
- 3) The Department determined during the application process that the Claimant's total household gross income totaled one thousand seven hundred seven dollars (\$1707.00). The Department's representative, Tera Pendleton, testified that this amount was derived from the Department's data system from information obtained from the Social Security Administration's records. She added that this is the gross income before any deductions for Medicare premiums are made. Although the Claimant disagreed with this amount he provided no substantive evidence to support his claim.

- 4) The Claimant testified that the Department did not review his expenses regarding medical needs at the time of application. He stated that they only asked him about his mortgage payment and utility obligation, and never looked at any of his other expenses during the application process. He added that his wife is required to utilize an insulin pump and an oxygen machine, and that she uses a wheelchair as well. He went on to say that he spends approximately sixty dollars (\$60.00) monthly for just her medicine, not to mention other medical expenses he purchases at Wal-Mart monthly. He added that he also spends a lot of money monthly on gasoline for traveling to medical appointments. None of this information was considered by the Department.
- 5) The Department denied the Claimant's application for SNAP on June 16, 2010 and sent him a notification letter that included the following pertinent information:

ACTION: Your 05/27/10 application for SNAP has been DENIED.

REASON: Income is too much for you to receive benefits.

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

The following individuals are ineligible.

SNAP Gross Income Limit 1579.00

Ms. Pendleton testified that the gross income limit for two persons is one thousand five hundred seventeen dollars (\$1517.00). She stated she had no explanation as to why the notification letter mailed to the Claimant listed the gross income limit as one thousand five hundred seventy nine dollars (\$1579.00) and that this must be an error. She also testified that she is unaware of any policy that takes into consideration an applicant's age or disability in determining income limits to be considered.

- 6) The Department contends that the Claimant failed to meet the gross income limit test which rendered him ineligible for SNAP, and that no further calculations were necessary or considered as a result.
- 7) The Claimant contends that the Department should have considered all his expenses thoroughly prior to making any decision to deny his application for SNAP.
- 8) The West Virginia Income Maintenance Manual §10.4.C states in pertinent part:

DETERMINING ELIGIBILITY AND BENEFIT LEVEL

The process of determining eligibility and the amount of the benefit differs when an AG member is elderly or disabled.

1. Determining Eligibility

- When at least one AG member is elderly, which is at least age 60, or disabled as specified in Section 12.15, B, eligibility is determined by

comparing the countable income to the maximum net monthly income found in Appendix A. There is no gross income test.

- 9) The West Virginia Income Maintenance Manual §10.4,B states in pertinent part:

INCOME DISREGARDS AND DEDUCTIONS

Certain items may be allowed as income deductions to arrive at an AG's countable income. A deduction is allowed even if the payment is made from assets. The expense must be billed or be due during the certification period in which the deduction is claimed. In addition, deductions from the AG's income are applied only if the expense is obligated to be met by the AG's own resources. The AG's obligation must be to an individual not included in the AG to receive a deduction.

NOTE: When a client fails to report household expenses which would normally result in a deduction, the AG loses their entitlement to that deduction. They have a right to the expense, once it is reported and verified, if required by policy.

The following are the only allowable disregards and deductions for the SNAP Program. They apply to the income of the AG members and any individual sanctioned/penalized due to enumeration, IPV, failure to comply with a work requirement or disqualified by law.

1. Earned Income Disregard

Twenty percent (20%) of gross non-excluded earned income, including gross profit from self-employment, is disregarded.

2. Standard Deduction

A Standard Deduction is applied to the total non-excluded income counted for the AG, after application of the Earned Income Disregard. The amount of the Standard Deduction is found in Appendix B.

3. Dependent Care Deduction

A deduction is allowed for payment for the care of a child or other dependent, when the expense is necessary or an Income Group member to accept, continue or seek employment or training, or pursue education which is preparatory to employment.

4. Child Support Deduction

A deduction is allowed for legally obligated child support actually paid by an AG member or disqualified individual to an individual not residing in the same household.

5. Homeless Shelter Standard Deduction

This deduction may be applied when a homeless AG incurs any shelter/utility expenses for the month.

6. Medical Expenses

Medical expenses in excess of \$35 must be allowed as a medical deduction. Only the medical expenses of AG members who are elderly, which is at least age 60, or disabled, as defined in Section 12.15, B, are considered. Once the medical expenses of all such AG members have been totaled, the amount of the total in excess of \$35 is used as a medical deduction. There is no maximum dollar limit for the amount of a medical deduction.

a. Allowable Expenses

- Medical and dental care including psychotherapy and rehabilitation services provided by a qualified health professional
- Prescription and over-the-counter drugs, if prescribed by a qualified health professional. This includes postage and handling costs paid for mail-order prescription drugs.
- Fee paid by AG members for the member's enrollment in the Medicare Approved Drug Discount Program.
- Medical supplies and equipment, if prescribed by a qualified health professional. Items may be either purchased or rented.
- Hospital or outpatient costs, nursing care and nursing facility care. This is also allowable if paid on behalf of an individual who was a member of the AG immediately prior to admission to a facility.
- Health and hospitalization insurance premiums, including long-term care, vision and dental insurance.
- Medical support service systems, if prescribed by a qualified health professional. Allowable costs are related to the purchase, rent and maintenance of the system. Examples of medical support service systems include, but not limited to, Lifeline Personal Response, Life Alert, etc.
- Medicare premiums, except for cases in which the Department is paying the premium.
- Dentures
- Hearing aids and batteries
- Purchase and maintenance of prosthetic devices
- Purchase and maintenance of a trained service animal which is required for a physical or mental disability and is prescribed by a doctor. This includes the cost of food and veterinarian bills for the service animal.
- Prescription eyeglasses
- Reasonable cost of transportation and lodging to obtain medical treatment or services. If a client can verify that a charge was made for transportation, but the provider will not state the amount, the current state mileage rate is allowed as a medical deduction.

- Maintaining an attendant, homemaker, home health aid [sic], housekeeper or child care services necessary due to age, infirmity or illness. If the AG provides the majority of the attendant's meals, an amount equal to the maximum monthly coupon allotment for one person is also used as a medical deduction.
- Cost-sharing, such as co-payments and expenses used to meet the spenddown (spend-down) of a Medicaid recipient.

b. Consideration of Medical Bills

The client must only be required to report medical expenses at application and redetermination. He may choose to report changes in expenses during the certification period, and such changes must be acted on.

Only medical costs that are not reimbursable through a third party (insurance, Medicaid, etc.) are deducted. When the reimbursable portion of the expense is not known when the client reports the expense, the deduction is delayed until the information is obtained.

Medical bill are expected to be paid within a specific period of time. Bills which are overdue when reported cannot be considered, regardless of the method used to claim medical expenses or how the expense may be deducted once it is reported. The date the expense is incurred is not the deciding factor, but rather, the date the expense is billed or otherwise due.

The AG may elect to have one-time-only costs deducted in a lump sum or prorated over the certification period. If, at application, a client anticipates and verifies that he will incur an expense during the certification period, it may be prorated over the entire certification period. If he reports an expense during the certification period, it may be prorated over the remainder of the certification period.

When the medical bill or expense is paid by a credit card, it must be treated as a one-time-only cost and may be deducted in a lump sum or prorated over the certification period.

7. Shelter/Utility deduction

After all other exclusions, disregards and deductions have been applied, 50% of the remaining income is compared to the total monthly shelter costs and the appropriate Standard Utility Allowance (SUA). If the shelter costs/SUA exceeds 50% of the remaining income, the amount in excess of 50% is deducted. The cap on the shelter/utility deduction does not apply when the SNAP AG includes an individual who is elderly or disabled.

a. Shelter Costs

Items considered in arriving at shelter costs are the continuing amounts of:

- Rent. Security or damage deposits are not a shelter expense.
- Mortgage payments. This includes second mortgages and home equity loans and any other loans for which the dwelling is used as collateral
- Interest on mortgage payments
- Condominium and association fees, regardless of purpose for the fees.
- Payments paid to an escrow account that has been established to pay property taxes and homeowner's insurance.
- Property taxes and special tax assessments on the structure and lot required by State or local law. This does not include assessments such as police and fire fees, unless the fee is based on property valuation.
- Insurance on the structure and lot. This does not include insurance on furniture or personal belongings. If the insurance cost on the structure and the cost on the personal belongings/furniture cannot be identified separately, the entire insurance payment is allowed.
- Cost of repairing the home which was damaged or destroyed due to a natural disaster or misfortune including, but not limited to, fire, flood or freezing temperatures. This does not include charges that will be or have been reimbursed from any source such as insurance, private agency, etc.
- A car payment when the homeless AG lives in the vehicle.
- Insurance on the vehicle itself when the homeless AG lives in the vehicle.

10) The West Virginia Income Maintenance Manual §10.4,C, states in pertinent part:

1. Determining Countable Income

Step 1: Combine monthly gross non-excluded earnings and monthly gross profit from self-employment.

Step 2: Deduct 20% of Step 1.

Step 3: Add the gross non-excluded unearned income, including the WV WORKS benefit and any amount reduced or being repaid to the WV WORKS due to failure to comply with a program requirement.

Step 4: Subtract the Standard Deduction found in Appendix B.

Step 5: Subtract allowable Dependent Care Expenses.

Step 6: Subtract the amount of legally obligated child support actually paid.

Step 7: Subtract the Homeless Shelter Standard Deduction found in Appendix B.

Step 8: Subtract allowable medical expenses in excess of \$35.

Step 9: Calculate 50% of the remaining income and compare it to the actual monthly shelter/SUA amount.

Step 10: At Least One Person Elderly or Disabled and Shelter/SUA
Greater than Step 9: The amount in excess of 50% is deducted, without regard to the shelter/utility cap, in Appendix B to arrive at countable income.

Step 11: Compare the countable income to the maximum net income in Appendix A for the AG size.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that SNAP benefits are calculated by beginning with the total gross income, and subtracting certain deductions and disregards to arrive at a final net monthly countable income. In cases involving assistance groups which include individuals over age sixty (60) or disabled, the Gross Income Limit test is not applied. The assistance group's countable net income is only required to fall below the Net Income Limit after allowable deductions and disregards are applied.
- 2) Both the Claimant and his wife are over age sixty (60) and disabled; therefore, only the net income test applies in this instance. The Department was not correct in applying the gross income limit test.
- 3) Policy provides that a wide variety of medical expenses may be utilized in determining the Claimant's medical expense deduction, including Medicare premiums, purchases for certain medical equipment, prescriptions and over-the-counter medical costs prescribed by medical professionals, as well as gasoline expenses to and from medical appointments.
- 4) The Department did not obtain necessary information and documentation during the application process in order to properly assess the Claimant's medical expenses to determine a medical deduction. Both the Claimant and the Department testified that this information was not thoroughly discussed, and testimony provided during the hearing provides that the Claimant may have eligible expenses, including an obligation to pay Medicare premiums, as well as expenses for medical equipment, prescriptions, over-the-counter medical supplies, and gasoline expenses to and from medical appointments.
- 5) Policy provides that a wide variety of shelter expenses may be utilized in determining the Claimant's shelter expense deduction, including mortgage insurance obligations, taxes and repair costs associated with the expense of owning a home.
- 6) The Department obtained information regarding the Claimant's mortgage payment obligation for consideration of the shelter expense deduction, but did not explore and determine whether other allowable expenses commonly experienced by homeowner's were involved.
- 7) Therefore, it has been shown that the Department did not follow policy in determining financial eligibility for SNAP for this Claimant.

IX. DECISION:

It is the decision of the State Hearing Officer to **remand** the action to deny the Claimant's SNAP application dated May 27, 2010 back to the Department for further action. The Department is required to follow policy which provides that the gross income test is not to be

utilized in this instance. The Department is required to thoroughly evaluate the Claimant's financial and medical expenses in order to determine all allowable deductions. Then, after proper calculations are completed, determine whether the household's income meets the net income limit test. Should eligibility be established, benefits will begin based on the May 27, 2010 application date.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd Day of September, 2010.

**Cheryl Henson
State Hearing Officer**