



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

August 31, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 25, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Supplemental Nutrition Assistance Program (SNAP) benefits due to excessive income and decision to deny your application for School Clothing Allowance (SCA).

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 SNAP and SCA are based on current policy and regulations. These regulations provide that in order to qualify for SNAP, the total countable net income, after all allowable deductions, must be less than 130% of the Federal Poverty Level for the number in the assistance group. For SCA, the total countable gross income must be below 100% of the Federal Poverty Level for the size of the assistance group (WV Income Maintenance Manual § 10.4 C and § 15 Appendix B).

The information submitted at your hearing revealed that that based on the income and deductions allowed by policy, your household's countable net income is excessive to continue receiving SNAP and the gross countable income is excessive to receive SCA.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to terminate your SNAP and deny your SCA application.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Michelle Jones, Economic Service Worker

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1707 and 1725

**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 August 25, 2011 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 a timely appeal, filed July 14, 2011.

It should be noted here that the claimant's benefits under the Supplemental Nutrition Assistance Program have continued pending a decision.

II. PROGRAM PURPOSE:

The programs entitled Supplemental Nutrition Assistance Program (SNAP) and School Clothing Allowance (SCA) are administered by the West Virginia Department of Health and Human Resources.

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 benefits to households who meet the eligibility criteria.

The WV WORKS SCA Program is designed to provide clothing assistance for school age children. These children must be foster children or recipients of WV WORKS during the month of July. The West Virginia School Clothing Allowance (WVSCA) provides clothing assistance for school age children in families who do not wish to apply or are not financially eligible for WV WORKS but whose income is equal to or less than 100% of the Federal Poverty Level.

III. PARTICIPANTS:

-----, Claimant
-----, Witness for Claimant
-----, Witness for Claimant
-----, Witness for Claimant
Michelle Jones, Economic Service Worker

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department's proposal to terminate Claimant's SNAP benefits and deny SCA was correct.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 10.4 A, 10.4 B, 10.4 C, Appendix A, 9.21 A and 15 Appendix B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Department's Summary
- D-2 Hearing Request, Hearing/Grievance Record Information and Scheduling Order
- D-3 Rights and Responsibilities Form dated July 11, 2011
- D-4 School Clothing Allowance Application dated July 11, 2011
- D-5 Combined Application and Review Form dated July 11, 2011
- D-6 Paystubs from [REDACTED] Food Store [REDACTED] Food Group), Paystubs from [REDACTED] [REDACTED] Store, Correspondence from Pamela Parris, RSDI Data Exchange Printout, Lease Agreement, Utility Bills and Prescription Printout from [REDACTED] Pharmacy
- D-7 SNAP Allotment Screen (EFAD) and School Clothing Allowance Budget Screen (EASC) from RAPIDS Computer System
- D-8 Case Comments (CMCC) from RAPIDS Computer System
- D-9 Notification Letter dated July 12, 2011
- D-10 WV Income Maintenance Manual Chapter 10 Appendix A

Claimants' Exhibits:

- C-1 Paystubs from [REDACTED] Store

- C-2 Paystubs from [REDACTED] Food Store
C-3 Prescription Printout and Receipts from [REDACTED] Pharmacy

VII. FINDINGS OF FACT:

- 1) Claimant completed a SNAP review and applied for SCA on July 11, 2011. A notification letter dated July 12, 2011 was issued which reads in pertinent parts (D-9):

Your 7/11/11 application for SNAP has been DENIED. Income is more than the income limit for you to receive benefits.

Your application for School Clothing Allowance dated 7/11/11 has been DENIED. Income is too much for you to receive benefits.

- 2) Michelle Jones, Claimant's caseworker testified to the income used in determining eligibility for SNAP and SCA for Claimant's household. Claimant receives SSI \$674 monthly, ----- receives Social Security \$184 monthly, ----- receives SSI \$449 and Social Security \$184 monthly, ----- receives SSI \$134, Social Security \$152 and employment earnings from [REDACTED] averaged to \$904.98 monthly and employment earnings averaged to \$1709.08 monthly for ----- . Claimant's gross monthly income for her household was calculated as \$4391.56 (D-6 and D-8).

Ms. Jones stated Claimant was given a shelter deduction for rent of \$600 monthly and the standard utility allowance for her heating source of \$400 monthly. Claimant also submitted medical deductions in excess of \$35 of \$6.50. Ms. Jones testified that based on all allowable deductions in policy, Claimant's net income was calculated as \$3657.25 which exceeded the income limits for her household to continue receiving SNAP (D-6, D-8 and D-10).

- 3) Ms. Jones testified that Claimant's SCA application was denied due to excessive income as well. Ms. Jones stated Claimant's school-age children living in her household are -----, -----, ----- and ----- . Ms. Jones stated ----- is not eligible to receive SCA as he is a SSI recipient and already age 18. Claimant is a SSI recipient which excludes her and her income from the eligibility determination. ----- is the father of -----, so his income not only counts for her SCA, but for ----- and ----- . Ms. Jones explained that SCA is based on WV WORKS policy and since -----, ----- and ----- are all blood-related siblings and ----- is the father of -----, they are all four (4) pulled together in the same assistance group. Ms. Jones stated ----- and -----'s Social Security of \$184 each and -----'s earned income of \$1709.08 totals \$2077.08, which exceeds the income limit for SCA (D-6, D-7 and D-10).
- 4) Claimant testified that -----'s earned income was calculated incorrectly. Claimant stated he does not receive overtime consistently, only from the first through the ninth of each month. Claimant stated ----- received some additional overtime in June and July

because his employer was short-handed. Claimant stated a new employee was hired in August and ----- will no longer receive the additional overtime (C-2).

Claimant testified that she and her children have medical expenses each month that she was not given the correct deduction for (C-3). Claimant stated in addition to rent and utilities, she pays for car insurance, life insurance and an extended warranty policy on her vehicle. Claimant stated ----- pays only for the cable bill and any repair expenses.

Claimant did not agree with -----'s income counting against ----- and -----'s SCA as he is not their father nor is he her husband. Claimant stated ----- does not buy ----- and ----- school clothes and her children should not be punished by not receiving SCA.

- 5) -----, Claimant's son testified that he is a full-time high school student and works part-time at [REDACTED] -----stated he uses his paychecks to pay for car insurance, his car payment, clothing and meals while at work. He stated he does not contribute to the household expenses.
- 6) WV Income Maintenance Manual § 10.4 A (1-4) states (for SNAP):

Eligibility is determined and benefits are issued on a monthly basis. Therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. The following information applies to earned and unearned income. For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the AG. For all cases, income is projected; past income is used only when it reflects the income the client reasonably expects to receive.

There are 2 methods for reasonably anticipating the income the client expects to receive. One method uses past income and the other method uses future income. Both methods may be used for the same AG for the same certification period because the method used varies with the circumstances of each source of income. The situations which prompt usage of one or the other method are listed below. More details are contained in the follow items. Use past income only when both of the following conditions exist for a source of income:

- Income from the source is expected to continue into the certification period; and
- The amount of income from the same source is expected to be more or less the same.

NOTE: For these purposes, the same source of earned income means income from the same employer, not just the continued receipt of earned

income. Use future income when either of the following conditions exist for a source of income:

- Income from a new source is expected to be received in the certification period; or
- The rate of pay or the number of hours worked for an old source is expected to change during the certification period.

NOTE: For these purposes, a new source of earned income means income from a different employer. Income that normally fluctuates does not require use of future income. Future income is used for old sources only when the hourly, weekly, monthly, etc. rate of pay changes or the number of hours worked during a pay period increases or decreases permanently.

It is necessary to consider information about the client's income sources before the Worker can decide which income to use. The Worker must follow the steps below for each old income source.

Step 1: Determine the amount of income received by all persons in the Income Group in the 30 calendar days prior to the application/redetermination date. 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.

Step 2: Determine if the income from the previous 30 days is reasonably expected to continue into the new certification period. If it is not expected to continue, the income from this source is no longer considered for use in the new certification period. If it is expected to continue, determine if the amount is reasonably expected to be more or less the same. If so, the income source is used for the new certification period and treated according to item 4 below. If it is not expected to continue at more or less the same amount, the income source is used for the new certification period and treated according to item 3 below.

Step 3: Record the results of Step 2, including the amount of income, why the source is or is not being considered for the new certification period, the client's statement about continuation of the income from this

source, the time period used, and, if more than the previous 30 days, the reason additional income was considered. Once the Worker has determined all of the old sources of income to consider and the time period for which they are considered, he must then determine if any source should be considered for future income.

Step 3: Record the results of Step 2, including the amount of income, why the source is or is not being considered for the new certification period, the client's statement about continuation of the income from this source, the time period used, and, if more than the previous 30 days, the reason additional income was considered. Once the Worker has determined all of the old sources of income to consider and the time period for which they are considered, he must then determine if any source should be considered for future income.

The purpose of finding an average amount of fluctuating income is to even out the highs and lows in the amount of income. The client is not, then, required to report fluctuating income each pay period and the Worker is not required to change income monthly. Sometimes the client receives higher benefits than he would if actual income were used and sometimes he receives lower benefits. Therefore, when the Worker has averaged fluctuating income based on the best information available and the client's income does not match the monthly amount used by the Worker, there is no repayment when the client receives higher benefits and no supplemental issuance when the client receives lower benefits. Should the client report fluctuations in the amount of income, the Worker is only required to recalculate the countable income when, in his judgment, the fluctuation will significantly impact the coupon allotment. All changes reported by the client must be considered, but not necessarily used. Reported changes must be recorded and the Worker must record why the reported income was or was not used.

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

- Weekly amount x 4.3
- Bi-weekly amount (every 2 weeks) x 2.15
- Semi-monthly (twice/month) x 2

7) WV Income Maintenance Manual § 10.4 B (for SNAP) states:

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.

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. This disregard is applied to the combined earnings of all members of the AG and to those persons whose income is counted or deemed. It is intended to cover those expenses incidental to employment or training, such as transportation, meals away from home, special clothing and payroll deductions.

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 for 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. Homeless AG's which receive free housing and utilities throughout the month are not eligible for the deduction. However, if they incur any shelter or utility expense, regardless of the amount, any time during the month, or if they can reasonably be expected to have such expenses, they qualify for the Homeless Shelter Standard deduction.

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. Thirty-five dollars (\$35) is deducted from the total amount of expenses for the AG, not \$35 from each person's expenses.

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 exceed 50% of the remaining income, the amount in excess of 50% is deducted. The deduction cannot exceed the shelter/utility cap found in Appendix B.

EXCEPTION: The cap on the shelter/utility deduction does not apply when the SNAP AG includes an individual who is elderly or disabled, as defined in Section 12.15,B. The expense must be allowed only if the AG is obligated to pay with the resources of the AG. The deduction applies whether the expense is obligated from excluded or non-excluded resources. There is no time period for deciding when a AG is no longer allowed a deduction for the bill. The AG is no longer allowed the deduction when the expense is no longer billed or is no longer due. An expense does not have to be paid to be a deduction.

a. Shelter Costs

b. Standard Utility Allowance (SUA)

The Standard Utility Allowances are fixed deductions which are adjusted yearly to allow for fluctuations in utility costs. These deductions are the Heating/Cooling Standard (HCS), the Non-Heating/Cooling Standard (NHCS), and the One Utility Standard (OUS). The current SUA amounts are found in Appendix B.

To be eligible for the HCS, the AG must meet the following criteria:

(a) Heating or Cooling Costs

AGs that are obligated to pay a heating or cooling expense that is billed on a regular basis are eligible for the HCS. This does not mean that there must be a monthly billing for heating or cooling throughout the year. It means that there must be a regular bill for heating or cooling during the appropriate season.

8) WV Income Maintenance Manual § 10.4 C (for SNAP) states:

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

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.

- When no AG member is elderly or disabled, the gross income must be equal to or less than the gross income limit in Appendix A. If so, the AG qualifies for the disregards and deductions in Section 10.4,B. If the gross income exceeds the amount in Appendix A, the AG is ineligible.

The following steps are used to determine countable income for cases meeting the eligibility tests in item 1 above.

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: Shelter/SUA equal to or less than step 9 - At least one person elderly or disabled: No further computation is needed. The amount from Step 8 is the countable income.

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 the countable income

Step 11: Compare the countable income to the maximum net income in Appendix A for the AG size. This net income test does not apply to Categorically Eligible AG's.

To determine the coupon allotment, find the countable income and the number in the AG in Appendix C. One-and two-person AG's who meet the gross and net income test or who are categorically eligible, as defined in Section 1.4,R,3, automatically receive a minimum \$16 monthly benefit, unless it is a prorated benefit. See Appendix D. No benefits are issued to any AG eligible for an initial, prorated amount of \$1 - \$9. See Chapter 1 for proration requirements.

Although Appendix C of this Chapter (10), Basis of Issuance, provides benefit amounts based upon countable income, the Worker may determine the benefit amount by using the following method. This method is also used by RAPIDS to determine the benefit.

Multiply the net income by 30% (round up)
Subtract 30% of the net income by the coupon allotment for the AG size

- 9) WV Income Maintenance Manual § 15 Appendix B and C (for SCA) states:

ELIGIBILITY DETERMINATION GROUPS

The Eligibility Determination Groups are the same as for WV WORKS.

INCOME

All WV WORKS income requirements in Chapter 10 apply. For SCA, income eligibility is based only on the month of July, the program month. When income has been previously verified within the last two months, additional income verification is not required. If appropriate, income must be updated in RAPIDS.

The total gross non-excluded income for the AG is compared to 100% FPL. See Chapter 10, Appendix A. There are no deductions from the gross non-excluded income. Income sources are treated according to the WV WORKS policy in Section 10.3. Income is prorated and converted as appropriate to determine a monthly amount as it is for WV WORKS. If the gross non-excluded income is equal to or greater than 100% FPL, the family is ineligible for WVSCA.

- 10) WV Income Maintenance Manual § 9.21 A (for WV WORKS/SCA) states:

The Assistance Group: Who Must Be Included

The following individuals are required to be included:

- All minor, dependent, blood-related and adoptive siblings who live in the same household and are otherwise eligible. For this purpose only, otherwise eligible means living with a specified relative.
- The parent(s) of the child(ren) identified above when the parent(s) lives with the child(ren), unless they fall under any of the categories of who may not be included listed in Item 3 of this section.
- The legal spouse of the parent described above, regardless of the legal spouse's legal relationship to the child(ren), unless they fall under any of the categories of who may not be included listed in Item 3 below. The stepparent may not choose to be excluded when the parent is in the home.

VIII. CONCLUSIONS OF LAW:

- 1) The thirty day period of consideration from the date of Claimant's SNAP review is June 11, 2011 through July 10, 2011. The Department used paystubs for ----- for June 16, June 23, June 30 and July 7, 2011 and counted the overtime on each of these paystubs in calculating his monthly average for SNAP. The Department used paystubs from ----- for June 15, June 22, June 29 and July 6, 2011 for an average monthly income. The Department used the correct paystubs for ----- and ----- for the thirty day period of consideration. Of the four paystubs submitted for -----, all four included 2-3 hours overtime. Claimant testified that ----- received an unusual amount of overtime during that time as his employer was shorthanded. Claimant failed to provide any verification from the employer or current paystubs for ----- to verify this overtime was not continuing and should not be counted (D-6, C-1 and C-2).
- 2) A review of Claimant's medical deductions provided to the Department at review and during the hearing found Claimant's household incurred \$34 monthly in recurrent medical expenses for all elderly and disabled household members. Claimant's household is not entitled to a medical deduction as the expenses do not exceed \$35 monthly (D-6 and C-3).
- 3) Claimant's eligibility for SNAP is calculated as follows: gross combined earned income of \$2614.10 minus 20% earned income deduction ($2614.10 - 522.82$) is \$2091.28. The gross unearned income for Claimant, -----, ----- and ----- is \$1777, added to the net earned income totals \$3868.28 countable income for the household. The countable income minus the standard deduction for a household of 8 ($3868.28 - 205$) is \$3663.28. Claimant has a shelter and utility deduction of \$1000 (600 rent and 400 heating standard utility allowance). Fifty percent of the net income ($3663.28/2$) is \$1831.64. Claimant's shelter and utility expenses do not exceed fifty percent of the net income, so she is not entitled to receive a shelter and utility deduction. Claimant's countable net income is \$3663.28. The maximum net income limit for SNAP for a household of 8 is \$3085.

Calculations omitting any overtime for ----- are: \$2453.02 gross earned income minus 20% work deduction is \$1962.42. Gross unearned income of \$1777 added to \$1962.42 is \$3739.42. The standard deduction subtracted from this amount is \$3534.42 for a total countable net income for the household. Fifty percent of the net income is \$1767.21 which greater than Claimant's shelter and utility costs of \$1000. Claimant's net income of \$3534.42, calculated without any overtime for -----, still exceeds the allowable income limit for the household to continue receiving SNAP.

- 4) SCA policy allows no deductions from the gross income in determining eligibility for the program. Policy stipulates that all blood-related siblings and the parents of any of these siblings be included in the same assistance group for SCA. -----, -----, ----- and ----- and their income are all included in the determination of eligibility for SCA. All SSI income is excluded in this determination. The total countable income for ----- (omitting any overtime), -----, ----- and ----- is \$1916 (\$1548 plus \$184 plus \$184). The allowable income limit for SCA for a four person assistance group is \$1863. -----, ----- and ----- are not eligible to receive SCA.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate Claimant's Supplemental Nutrition Assistance Program benefits and deny School Clothing Allowance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st day of August 2011.

Kristi Logan
State Hearing Officer