



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

September 27, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 18, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny 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 for the SNAP is based on current policy and regulations. Some of these regulations state as follows: Gross profit from self-employment is the income remaining after deducting any identifiable costs of doing business from the gross income. (West Virginia Income Maintenance Manual Chapter 10.4.D.4.b)

Information submitted at your hearing reveals that the Department incorrectly calculated your self-employment income.

It is the decision of the State Hearing Officer to **reverse** the Department's action to deny your SNAP application and **remand** the case to the Department to determine eligibility based on the corrected self-employment income calculation.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Sandy Kerby, WVDHHR

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1885

**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 via telephone on September 18, 2012, on a timely appeal filed July 30, 2012.

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 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

Darlene Smith, Economic Service Supervisor, WVDHHR

Sandy Kerby, Economic Service Worker, WVDHHR

Presiding at the hearing was Pamela L. Hinzman, 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 action to deny the Claimant's SNAP application based on excessive income.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 10.4.C, 10.4.C.1, 10.4.D.b and 10, Appendix A

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated July 24, 2012
- D-2 1040 U.S. Individual Income Tax Return and Schedule C, Profit or Loss from Business
- D-3 SNAP Application dated June 29, 2012
- D-4 Statement from ----- dated May 17, 2012

Claimant's Exhibits:

- C-1 Statements from ----- dated July 25, 2012, and August 25, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant completed a Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, application (D-3) on June 29, 2012. At that time, the Claimant indicated that his monthly income included a \$560 Veteran's Administration disability payment and \$337 in Social Security benefits. In addition, the Claimant reported self-employment income of \$30 per month.
- 2) The Department sent a Notice of Decision to the Claimant on July 24, 2012 (D-1), informing him that his SNAP benefits were denied due to excessive income. The notice indicates that the Claimant's total gross monthly income is \$1,346 and the gross income limit for a one-person SNAP Assistance Group is \$1,180. The Claimant's net income is listed as \$1,114 and the net income limit for a one-person SNAP Assistance Group is \$908.
- 3) Sandy Kerby, Economic Service Worker with WVDHHR, testified that she has since learned the Claimant's Social Security income was miscalculated and that his gross monthly Social Security payment is \$360 instead of \$337. Ms. Kerby and Darlene Smith, Economic Service Supervisor with WVDHHR, testified regarding the Claimant's self-employment income and indicated they determined that the following information on Schedule C (D-2) of his income tax form could be considered in calculating self-employment income: gross receipts of \$6,549 minus deductions for car/truck expenses (\$142), contract labor (\$720), office expense (\$55), utilities (\$922), other expenses-credit processing fees (\$312), and travel reimbursement for 266 miles multiplied by the state mileage rate of .47 cents per mile (\$125).

- 4) The Claimant testified that he believes the Department calculated his self-employment income incorrectly because he did not receive a deduction from his gross receipts for his cost of goods sold. The tax form lists the Claimant's gross receipts as \$6,549, but goes on to list his cost of goods sold as \$4,041. Therefore, the tax form states his gross countable income prior to deductions was \$2,508. The form lists total expenses as \$2,151, which - when subtracted from gross receipts - leaves a net profit of \$357 per year or \$29.75 countable income per month.
- 5) West Virginia Income Maintenance Manual Chapter 10.4.C.1 states that when as Assistance Group member is elderly (at least 60 years old) or disabled, the net income must be equal to or less than the net income limit in Appendix A. It should be noted that the Claimant is 70 years old and, therefore, meets the policy definition of elderly.
- 6) West Virginia Income Maintenance Manual Section 10.4.C specifies that countable income for the SNAP is determined by computing household income and subtracting all allowable deductions based on the household circumstances. Once countable income is determined, the coupon allotment is determined by finding the countable income and the number in the Assistance Group (AG) in Chapter 10, Appendix C.
- 7) West Virginia Income Maintenance Manual Chapter 10, Appendix A states that the net income limit for a one-person Assistance Group is \$908.
- 8) West Virginia Income Maintenance Manual Chapter 10.4.D.4.b states the following:

Gross profit from self-employment is the income remaining after deducting any identifiable costs of doing business from the gross income.

(1) Deductions

Examples of allowable deductions include, but are not limited to:

- Employee labor costs, including wages paid to an AG member and any salary the client pays himself. When paid to an AG member, the income must be considered according to the provisions in Section 10.3, CC.
- Stock and supplies
- Raw material
- Seed
- Fertilizers
- Repair and maintenance of machinery and/or property
- Cost of rental space used for conducting the business
- Payments on the principal and interest of the purchase price of income-producing real estate and capital assets, equipment, machinery and other durable goods

- Insurance premiums and taxes paid on the business and income-producing property
- The utilities, principal, interest and taxes for the client's residence which is used in part to produce income. This is applicable only if the costs on the portion of the home used in the self-employment enterprise can be identified separately. See item B,7 above. The total deduction given for shelter and/or cost of doing business must not exceed the actual cost.
- Advertising costs
- Utilities
- Office expenses, such as stamps, stationery, etc.
- Legal costs
- Net Loss from self-employment farming. See item 4 below.

Do not deduct the following:

- Federal, State or local income
- Money set aside for retirement
- Travel from home to a fixed place of business and return
- Depreciation
- Amounts claimed as a net loss, except loss from farming self-employment. See item (4) below.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that the gross profit from self-employment is the income remaining after deducting any identifiable costs of doing business from the gross income.
- 2) The Claimant's gross receipts (prior to deductions) as shown on Schedule C of his 2011 tax return were \$6,549. The Department's representatives indicated that the Claimant is not entitled to receive a deduction for the cost of goods sold. However, policy clearly states that business costs are deducted from the **gross income** [emphasis added]. The Claimant's gross income – as listed on his tax return – was \$2,508 for 2011. Federal tax law allowed the Claimant a deduction for cost of goods sold prior to deducting acceptable business expenses, and there is no stipulation in Department policy that disallows the use of cost of goods sold as a self-employment deduction.

- 3) The Department's income calculation does not correspond with policy and is, therefore, incorrect.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's decision to deny the Claimant's SNAP benefits. The case is **remanded** to the Department for recalculation of the Claimant's self-employment income and a new eligibility determination. The Department should use the Claimant's gross income from self-employment as shown on his tax return - \$2,508 - subtract all allowable deductions, and divide by 12 months to arrive at an average monthly income. Should the Claimant be determined ineligible for SNAP benefits upon recalculation of income, he may file his appeal anew.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of September 2012.

Pamela L. Hinzman
State Hearing Officer