



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

Earl Ray Tomblin
Governor

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

March 14, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 13, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your eligibility for 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 SNAP benefits are based on current policy and regulations. Some of these regulations state that individuals who both live together and purchase and prepare their meals together must be included in the same SNAP assistance group. Individuals who are married and living together must be included in the same assistance group for SNAP regardless of whether they purchase and prepare their meals together. (West Virginia Income Maintenance Manual §9.1) When determining a monthly amount of income to count for the eligibility period, the Worker must consider the income which can be reasonably expected to be received in the certification period. (West Virginia Income Maintenance Manual §10.4.A)

The information submitted at your hearing supports that -----does not live in your household.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in adding your husband, -----, and his earned income to your SNAP case.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review /Tera Pendleton, Kanawha DHHR

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-576

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on March 13, 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 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
-----, Claimant's witness
-----, Claimant's witness

Tera Pendleton, Department representative
Tammy Drumheller, Department's witness
Christina Saunders, Department's witness
[REDACTED] Department's witness

It should be noted that the Claimant's witnesses and Ms. Spradling participated by telephone conference call.

It should also be noted that several attempts were made by the Hearing Officer to contact -----, as he was another witness for the Department scheduled to participate by telephone; however, he could not be reached.

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 decision to terminate the Claimant's eligibility for SNAP benefits based on its determination that the Claimant's husband, --- -----, lived in her household. His earned income was considered excessive.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 9.1, and 10.4.A

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case comments from Department's computer system dated from January 5, 2012 through February 15, 2012
- D-2 Income calculation screens from the Department's computer system
- D-3 SNAP disbursement screen from Department's computer system
- D-4 Notification letter from Department to Claimant dated January 23, 2012
- D-5 Sworn written statement dated January 6, 2012
- D-6 Income verification from [REDACTED] Banking and Trust dated January 19, 2012

Claimant's Exhibits:

- C-1 Ntelos phone bill dated February 16, 2012
- C-2 Notarized letter dated February 2, 2012 from -----
- C-3 Notarized letter dated January 26, 2012 from Theresa Spradling
- C-4 Notarized letter from ----- dated January 24, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving SNAP benefits during January 2012 when the Department determined that the Claimant's husband, --- ----, lived in her household, and that after considering his earned income, the total household income exceeded the maximum allowable income for SNAP. The Department sent the Claimant a notification letter (D-4) on or about January 23, 2012, which included the following pertinent information:

ACTION: Your SNAP benefits will stop. You will not receive this benefit after February 2012.

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.

Your Gross Income.....2883.46
SNAP Gross Income Limit.....2422.00

- 2) The Department contends that it conducted an investigation into the household composition of the Claimant's home and determined that her husband, ---- ----, lives in her household at [REDACTED] West Virginia. The Department also contends that he was receiving earned income at the time of the action from [REDACTED] Banking and Trust in an amount which, when combined with the other household income, exceeded the maximum allowable income for SNAP.
- 3) The Claimant disputes that her husband lives in her household. The Claimant did not dispute the calculated amount of earned income for her husband.
- 4) The Department's witness, Tammy Drumheller, is a Front-End Fraud Unit investigator in the [REDACTED] County, West Virginia, Department of Health and Human Resources' office. She stated that she investigated the Claimant's household composition during December 2011 and spoke to a witness, -----, who provided a statement to her supporting that the Claimant's husband lived with her in her household. She stated that this witness had agreed to participate in the hearing by telephone; however, several attempts were made during the hearing to contact him at the number provided and the Hearing Officer was unable to connect with him by telephone. Ms. Drumheller stated that she believed this witness to be an ex-husband to the Claimant; however, the Claimant testified that he was her brother. The Claimant stated that her brother provided false information to the Department because he was upset after having had an altercation with the Claimant's husband around the same timeframe as the report.

Ms. Drumheller stated that she went to the neighborhood during her investigation and subsequently obtained a sworn written statement from [REDACTED] dated January 6, 2012, which reads:

I [REDACTED] have lived here for (2) years. I have been here since 2010. -----and ----- lived next door in Apt. [REDACTED] when I moved in. I do not associate with them. We keep to ourselves. I see them at least once a day

going in and out. -----is our landlord. There [sic] cousin lives in Apt. [REDACTED] ---- and ---- are gone now. Their car is gone.

Ms. Drumheller added that later this same witness contacted the Department and reported by telephone that she knows the Claimant's husband lives in the home with the Claimant. Another Department witness, Christina Saunders, witnessed the phone conversation. Ms. Saunders is also employed with the Department, and she corroborated Ms. Drumheller's statements regarding the telephone conversation with [REDACTED]

The Claimant testified that she and [REDACTED] are not on good terms and have had several altercations. She stated that [REDACTED] made the comments regarding her household composition in an attempt to hurt her. She provided a notarized written statement (C-3) from [REDACTED] dated January 26, 2012, in which [REDACTED] stated, "----- and her two kids are the only ones that live at [REDACTED]" [REDACTED] also participated in the hearing by telephone, and testified that she wrote the January 26, 2012 letter. She added that she does not recall speaking with Ms. Drumheller on or about January 6, 2012, nor does she recall providing a sworn written statement attesting that -----lives with the Claimant. She stated that she does not know that he lives with the Claimant, only that she sees him there each day.

- 5) Ms. Drumheller stated that she obtained earned income verification (D-6) from ----- employer, [REDACTED] Banking and Trust, which supports that -----reported to the company at some point that he is married and that he lives at the same physical address as the Claimant. The evidence (D-6) shows that he became employed with the company on February 26, 2007. Ms. Drumheller added that the Claimant did not report her marriage to -----to the Department. It is not clear when the information was provided to [REDACTED] Banking and Trust.
- 6) Ms. Drumheller stated that she also checked the Department's data system records and found that the child support portion of the system showed that -----lived at the Claimant's physical address as of November 2, 2011. It is not clear who provided this information to the Department.
- 7) The Claimant did not dispute that -----utilizes her physical address as his own with businesses from time to time. She stated that neither she nor -----knows very many people from the area and that they rely on each other for support. She stated that he does not live with her. She stated that she married him during August 2006 and that they separated in October 2006. She stated that they have not lived together since that time.

The Claimant stated that -----lives at ----- Street, in -----, West Virginia. She added that he lives with a co-worker by the name of ----- . She provided a notarized statement from ----- (C-2) which supports that -----has been living with him for the past year at the ----- address. ----- participated in the hearing by telephone and reiterated the information he provided in his written statement (C-2) regarding ----- living with him. He stated that -----has lived with him since April 2011. He stated that -----personal belongings are also stored at his home.

The Claimant also provided a copy of a cell phone bill (C-1) which supports that as of February 2012, -----utilized the ----- address as his own with the Ntelos cell phone company.

- 8) The Department did not speak to the Claimant during its investigation and also did not investigate whether -----lived at the ----- address because it was unaware of a possible alternative address for him.
- 9) The Claimant also provided a notarized written statement (C-4) from her landlord, -----, dated January 24, 2012. ----- also participated in the hearing by telephone. He stated that he authored the letter (C-4) provided by the Claimant. He added that as far as he knows -----does not live with the Claimant. He stated that he is at the property two (2) or three (3) times daily for various reasons and that he has never seen evidence that -----lives at the Claimant's residence. He also corroborated the Claimant's statement regarding [REDACTED] dislike of her, and described their relationship as "feuding."
- 10) The West Virginia Department of Health and Human Resources Income Maintenance Manual §9.1.A, provides that individuals who both live together and purchase and prepare meals together must be included in the same assistance group for SNAP. Additionally, this policy provides that when individuals are married and living together, they cannot be a separate assistance group regardless of whether they purchase and prepare meals together.
- 11) The West Virginia Department of Health and Human Resources Income Maintenance Manual §10.4, A, provides that the Worker must consider the income the household is reasonably expected to receive when determining the amount of income to count for the eligibility period.

VIII. CONCLUSIONS OF LAW:

- 1) Policy specifies that individuals who are married and live together must be included in the same assistance group for SNAP regardless of whether they purchase and prepare their meals together. Policy also specifies that the Department must consider the income the household is reasonably expected to receive when determining the amount of income to count for the eligibility period.
- 2) The totality of the evidence supports that -----does not live with the Claimant. Testimony and a second written statement (C-3) from the Department's witness, [REDACTED] are contradictory to her first written statement (D-5) and therefore not reliable. The Claimant as well as her landlord indicated that the witness was not on good terms with the Claimant which may have influenced her statements.
- 3) The information from [REDACTED] Banking and Trust (D-6) dated January 19, 2012, supports that at some point -----provided that he was married and that the Claimant's address was his own, but does not show conclusively whether -----was living with the Claimant at the time of the Department's action.

- 4) Although the Department's records show that -----address was listed in its child support records as the same as the Claimant's during November 2011, it does not show conclusively that -----was living with the Claimant at the time of the January 2012 action to include him in the case. It is also unclear who provided this information to the Department.
- 5) The Claimant did not dispute that her husband utilizes her address as his own with businesses on occasion. She claims that he lives in -----, West Virginia, with a co-worker. She provided a copy of a February 2012 cell phone bill (C-1) for him showing the ----- address as his address. The co-worker testified and provided a written statement (C-2) attesting that her husband has lived with him in ----- since April 2010. Additionally, the Claimant's landlord also testified and provided a written statement (C-4) that to the best of his knowledge the Claimant's husband does not live with her. He stated that he was at the property frequently and daily and that he had never seen evidence of him living there.
- 6) Based on the information provided during this hearing, the Department was not correct in its decision to add -----to the Claimant's SNAP case, and in counting his earned income in determining eligibility for her SNAP benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department in adding -----to the Claimant's SNAP case and in counting his earned income in determining eligibility for her SNAP.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of March, 2012.

**Cheryl Henson
State Hearing Officer**