



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
P.O. Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

September 10, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2653

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Lori Woodward
State Hearing Official
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Drema Berry, WV DHHR

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

██████████,

Appellant,

v.

ACTION NO: 15-BOR-2653

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision 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 September 10, 2015, on an appeal filed July 23, 2015.

The matter before the Hearing Officer arises from the July 24, 2015 decision by the Respondent to deny the addition of an additional assistance group member for the month of August to the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Drema Berry, Economic Service Worker. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notification letter (EDC1), dated June 10, 2015
- D-2 Notification letter (EDI3), dated July 24, 2015
- D-3 Notification letter (EDC1), dated August 6, 2015
- D-4 WV Income Maintenance Manual, Chapter 9, §9.1 (excerpt)
- D-5 Hearing Summary

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant's daughter-in-law, [REDACTED] (Ms. [REDACTED] moved out of the Appellant's household and into another household. This was reported on June 6, 2015. She was removed from the Appellant's Assistance Group (AG) and notice was sent to the Appellant on June 10, 2015. (Exhibits D-5 and D-1)
- 2) Ms. [REDACTED] received SNAP benefits in the assistance group of the household she moved into for the months of July and August. (Exhibit D-5)
- 3) The Appellant reported Ms. [REDACTED] was back in his household on July 23, 2015. Ms. [REDACTED] was added back to the Appellant's AG for the month of September. Notices were sent to the Appellant on July 24, 2015 and August 6, 2015. (Exhibits D-2 and D-3)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (IMM) §9.1, explains that children under the age of 22 living with a parent must be in the same Assistance Group (AG). Additionally, it instructs that an individual cannot be a member of more than one SNAP AG in any month. When an individual who is included in an AG is absent or is expected to be absent from the home for a full calendar month, he is no longer eligible to be included in the AG, and must be removed after proper notice.

IMM §6.3.D.1 mandates that a client receive advance notice in all situations involving adverse actions except those described in the Adverse Actions Not Requiring Advance Notice Section in §6.3.C.2. The advance notice requirement is that notification be mailed to the client at least 13 days prior to the first day of the month in which the benefits are affected. The date on the notice must be the date it is mailed. IMM §6.3.D.2 instructs that the 13-day advance notice period begins with the date shown on the notification letter. It ends after the 13th calendar day has elapsed. It cites as an example: The advance notification letter (DFA-NL-C) is dated and mailed on October 18th. The 13-day advance notice period begins October 18th. The 13-day advance notice period ends at the close of the business day on October 31st. The action is effective no earlier than November 1st. If the 13-day notice period ends on a weekend or holiday, the action is taken on the first subsequent work day.

IMM §6.3.D.2.b.2(2) explains that if the 13-day advance notice period does not expire until the first day of the following month or later, the change is not effective until the month following the end of the 13-day advance notice period. It cites as an example: An advance notification letter (DFA-NL-C) is dated and mailed on December 27th. The 13-day advance notice period expires January 8th. The change is effective for February.

DISCUSSION

The Appellant does not dispute that Ms. [REDACTED] had moved out of his household in June 2015, which was reported. The Appellant does not dispute the fact that Ms. [REDACTED] was a member of another AG. He argues that although Ms. [REDACTED] returned to his household early in July, he did not report her back until July 23, 2015, because he wanted to make sure she was going to stay in his household. He does not believe the 13-day adverse action policy is fair.

Ms. [REDACTED] was not reported back in the Appellant's household until July 23, 2015. In order to give proper notice to the other SNAP benefit group which would be adversely affected by removing Ms. [REDACTED] proper 13-day advance notice is required. Per policy, adverse action could not be taken in the other benefit group until September. As such, Ms. [REDACTED] could not be added to the Appellant's AG until September as a matter of policy. The Board of Review has no authority to change policy.

CONCLUSION OF LAW

Whereas Ms. [REDACTED] was receiving SNAP benefits in another assistance group and it was not reported that she was back in the Appellant's household until July 23, 2015, the Department acted correctly by including Ms. [REDACTED] in the Appellant's SNAP AG in September 2015.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to add Ms. [REDACTED] to the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits in September 2015.

ENTERED this 15th day of September 2015.

Lori Woodward, State Hearing Official