



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

November 5, 2015

[REDACTED]

RE: [REDACTED] v WV DHHR
BOR ACTION NO.: 15-BOR-3261

Dear Ms. [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,

Donna L. Toler
State Hearing Officer
Member, State Board of Review

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

cc: Tera Pendleton, Economic Service Worker

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

██████████,

Appellant,

v.

Action No: 15-BOR-3261

**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 convened on November 5, 2015, on an appeal filed October 8, 2015.

The matter before the Hearing Officer arises from the August 31, 2015 decision by the Respondent to continue the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits in the amount of \$16.00 per month.

At the hearing, the Respondent appeared by Tera Pendleton, Economic Service Worker. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, the Appellant's mother. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Case Comments computer screen print, dated February 10, 2015 through October 19, 2015
- D-2 Correspondence from DHHR ██████████ County to the Appellant, dated August 31, 2015
- D-3 SNAP Budget computer screen print, dated August 28, 2015
- D-4 Case Benefit Summary computer screen print, dated September 2013 through November 2015
- D-5 Correspondence from DHHR ██████████ County to the Appellant, dated October 14, 2015

Appellant's Exhibits:

None

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 is a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits.
- 2) The Appellant resides in the home of her mother and father. The Appellant is a member of a one-person Assistance Group (AG). (Exhibit D-4)
- 3) On February 10, 2015, the Appellant completed an application for SNAP benefits. At the time of the application, the Appellant reported that she was responsible for rent in the amount of \$50, and that she was not responsible for utility costs. (Exhibit D-1)
- 4) On October 8, 2015, the Appellant submitted a change report form indicating that she was responsible for paying rent, medical expenses, and a phone bill. The Appellant did not indicate the amount she paid monthly for any of the reported expenses on the form.
- 5) On October 8, 2015, the Appellant submitted a written statement that she was responsible for paying medical expenses in the amount of \$140 per month, rent in the amount of \$200 per month, and assisting with groceries and phone in the amount of \$80 per month.
- 6) On October 14, 2015, the Department's representative spoke with the Appellant via telephone to confirm the Appellant's reported changes. At the time of the telephone conversation, the Appellant reported that she was not responsible for paying any utilities, but that she paid rent in the amount of \$50.00 per month and had medical expenses of around \$150 per month. (Exhibit D-1)
- 7) On October 14, 2015, the Department mailed the Appellant notice that she was required to provide verification of her medical expenses by October 24, 2015. The Appellant failed to return the requested information by the due date. However, at the time of the hearing, the Department had not yet acted on the Appellant's failure to verify the requested information. (Exhibit D-5)
- 8) At the time of the hearing, the Appellant reported that she paid rent in the amount of \$50 per month, one-fourth of the monthly utility bills (electric, water and cable), her cell phone and medical expenses estimated at \$150 per month.

- 9) The Appellant's mother reported that the Appellant pays \$50 per month in rent and approximately \$100 per month for her share of the utility expenses, which includes electricity used to heat the home.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) §2.2.B, establishes that all changes reported directly by an AG member must be acted on, even if the AG is not required to report the information. Reported changes that relate to an increased deduction remain the same if the recipient fails to provide verification of the reported change. 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 necessary. Retroactive benefits are not issued.

WV IMM §2.2.C, establishes that the first month that a reported change is effective is the month following the month the change is reported.

WV IMM §10.4.A, provides the budgeting methods to be used by workers in determining income for an AG. 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. For all cases, the Worker must determine the amount of income (earned and unearned) that can be reasonably anticipated for the AG.

WV IMM §10.4.B, indicates that certain items may be allowed as income deductions to arrive at an AG's countable income. 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. An expense does not have to be paid to be a deduction.

WV IMM §10.4.B.2, defines a 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 Chapter 10, Appendix B.

WV IMM §10.4.B.6, permits the deduction of verifiable 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 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.

WV IMM §10.4.B.7, provides information regarding the 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 cost/SUA exceeds 50% of the remaining income, the amount in excess of

50% is deducted. 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 an 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.

WV IMM §10.4.B.7.a, indicates that rent is considered a shelter cost.

WV IMM §10.4.B.7.b, defines the 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. AGs that are obligated to pay from their own resources a utility expense that is billed separately from their shelter costs are eligible for an SUA deduction. AGs which are not obligated to pay any utility cost are ineligible for the SUA, regardless of utility expenses paid by others in the residence. Eligibility for the SUA must be evaluated at certification, redetermination, and when the AG reports a change in utilities that may affect its eligibility for a deduction. 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. Heating expenses include, but are not limited to, the cost of electricity. Related costs are those expenses necessary to obtain the fuel or to operate the unit, such as electricity to run a gas furnace.

DISCUSSION

The Appellant contended that because she worked and paid taxes prior to being determined disabled, she is entitled to receive SNAP benefits. She added that because she has a medical condition that requires a special diet she should be entitled to receive additional SNAP benefits. There are no provisions in policy which provide additional SNAP benefits due to the amount of money an individual has paid through taxes and donations or due to medically necessary dietary restrictions.

The Appellant provided conflicting information to the Department regarding her monthly expenses, specifically the amount she is obligated to pay in rent and household utilities. In February 2015, the Appellant reported that she started paying rent to her parents in the amount of \$50 per month, but was not responsible for utilities. In September 2015, the Appellant reported that she was responsible to pay \$200 per month in rent, medical expenses of around \$140 per month and \$80 per month for her phone and groceries. On October 14, 2015, the Department's representative contacted the Appellant via telephone to confirm her monthly expenses due to conflicting information. At that time, the Appellant reported she pays rent of \$50 per month, medical expenses of \$150 per month, and was not responsible for paying utilities. The Appellant testified that she may have unintentionally provided conflicting information. She reported that she has several serious medical conditions (she has been determined to be disabled through the Social Security Administration) and that on the day of her telephone conversation with the Department's representative she was highly medicated. The Appellant reported that she does not

recall her conversation with the worker that date and that information she provided may not have been correct due to her medicated state.

Because the Appellant provided conflicting information regarding what expenses she was responsible to pay, the Department acted on the most recent information provided by the Appellant, which was gleaned in a telephone conversation with the Appellant on October 14, 2015. Policy indicates that changes reported by the recipient are considered verified upon receipt and must be acted upon. The Department was correct when it attributed a monthly expense of \$50 for rent and no utility deduction as of October 14, 2015.

During the hearing, both the Appellant and the Appellant's mother provided testimony that the Appellant is responsible for rent in the amount of \$50 per month, utilities (including electric for heat) in the amount of \$100 per month and medical expenses in the amount of \$150 per month. This testimony was consistent throughout the hearing and was found to be credible. Because the Appellant reported a change on the date of the hearing, the Department is required to act on that change effective November 5, 2015, and re-evaluate the Appellant's current SNAP benefits based on the inclusion of the reported obligation to pay utility expenses for the heating of the home. Policy indicates that reported changes are effective in the month following the report month. Any changes resulting from the inclusion of the shelter deduction shall be applied beginning December 2015.

Policy requires that recipients provide verification of their monthly medical expenses in order to receive a deduction for SNAP benefits. The Appellant did not provide the Department with verification of the medical expenses by the due date of October 24, 2015, however, because the requested deduction has not yet been denied, there is no relief available through the Board of Review on that issue. The Department's representative provided testimony that because verification of the medical expenses are past due they will be denied, but that the Appellant can provide verification of the medical expense at any time as a change report and a deduction can then be applied to her case.

CONCLUSIONS OF LAW

- 1) The Department was correct in its decision not to apply a utility deduction to the Appellant's SNAP benefits. Policy indicates that changes reported by the Appellant are verified upon receipt. Prior to the hearing in this matter, the Appellant's most recent report to the Department was that she was responsible for rent in the amount of \$50 per month and was not responsible for any utility expenses.
- 2) At the time of the hearing, the Appellant had not yet provided verification of her medical expenses in order to receive a deduction for her SNAP benefits. Until such verification is received, the Department is correct in not applying a medical expense deduction to the Appellant's SNAP benefits.
- 3) At the time of the hearing, the Appellant reported a change that she is responsible for the payment of utility expenses, including the home's heating source. This information was verified by the Appellant's mother. The Department is required to act upon the reported

change through the re-calculation of the Appellant's SNAP benefits with the inclusion of the utility deduction, effective December 2015.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision to approve the Appellant's SNAP benefits in the amount of \$16 per month.

Because the Appellant reported a change in her monthly utility expense, the matter is hereby **remanded** to the Department for re-calculation of the Appellant's SNAP benefits with the inclusion of the reported utility deduction. In accordance with policy, any change in the Appellant's SNAP benefits resulting from the reported change shall be effective in December 2015. The Department shall mail the Appellant notice of its decision and include a fair hearing request with the notice.

ENTERED this ____ day of November 2015.

Donna L. Toler
State Hearing Officer