



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
(304) 746-2360, ext. 2227

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

January 27, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 14-BOR-3919

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

cc: Maria Sisco-Wilson, Family Support Specialist
Kathy Brumfield, Family Support Supervisor

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

██████████,

Claimant,

v.

Action Number: 14-BOR-3919

**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 January 22, 2015, on an appeal filed December 12, 2014.

The matter before the Hearing Officer arises from the November 18, 2014 decision by the Respondent to decrease Claimant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Maria Sisco-Wilson, Family Support Specialist. The Claimant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Case Benefit Summary computer screen print, dated March 8, 2014 through December 8, 2014
- D-2 Data Exchange Summary computer screen print, dated January 24, 2011 through October 13, 2014
- D-3 Correspondence from DHHR ██████████ to Claimant, dated November 18, 2014
- D-4 Case Comments computer screen print, dated October 29, 2014 through December 8, 2014
- D-5 OSCAR computer screen print - child support received September 16, 2014 through January 9, 2015, and Case Summary computer screen print

D-6 eRAPIDS Financial Information computer screen print, child support collection
April 2014 through December 2014

Claimant'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 Claimant is a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits. On or about October 27, 2014, the Claimant submitted an Interim Contact Report (PRC2) to the Department.
- 2) On or about November 17, 2014, a Department worker processed the Claimant's Interim Contact Report and noted that the Claimant reported a decrease in income, that she was no longer receiving child support payments. (Exhibits D-1 and D-4)
- 3) The Department documented in the Claimant's case record that "client reports that no [child support-direct payments] received for 10/14 however used amount of \$285.39 [child support-direct payments] and \$28.61 [child support-arrearages] that was received 2 out of the last 3 months from 8/2014 - 10/2014; confirmed decrease in [SNAP] benefits also due to previous worker's calculation of UCI". (Exhibit D-4)
- 4) The Department did not issue a verification checklist providing the Claimant opportunity to verify the reported decrease in child support income at the time of review.
- 5) The Department's representative explained that child support direct payments (CSDP) and child support arrearages (CSAR) are averaged using either the three-month or six-month time periods prior to the application or report month.
- 6) Documentation provided by the Department indicated that CSDP and CSAR were issued to the Claimant as follows (Exhibits D-5 and D-6):

MONTH/YEAR	CSDP	CSAR
August 2014	\$285.39	\$21.30
September 2014	\$285.39	\$28.61
October 2014	\$285.39	\$28.61

- 7) Payment history shows that in the time period from November 2013 through October 2014, the Claimant received no child support payments in November 2013, December 2014, January 2014 and November 2014. Child support payments less than the court

ordered amount were received in February 2014, March 2014, April 2014 and May 2014.

- 8) On December 8, 2014, the Claimant called a Department worker and reported she did not receive child support for the month of November 2014. The Department worker acknowledged that the Claimant did not receive child support in the month of November 2014, and indicated that child support is calculated using either the previous 3 or 6 months to find the average child support received. However, there was no indication that the Department worker averaged the Claimant's previous 3 or 6 months of child support to determine ongoing benefits at the time the change was reported in December 2014. (Exhibit D-4)
- 9) The Claimant contended that the child support she receives is inconsistent and irregular. She reported that there have been occasions when the absent parent will pay child support for three or four months and then none for six or eight months. The Claimant stated that she did not receive any child support in the month of November 2014, and that she thought it was unfair to count income against her that she did not receive. The Claimant added that the decrease in SNAP benefits at Christmas was a hardship and unfair.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) §1.4.N.1.b indicates that Interim Contact Reports must be made at the midpoint of SNAP certification. No interview is required for an Interim Contact Report.

WV IMM §2.2.B.5 outlines the Worker's responsibilities in processing the Interim Contact Report. If a change is reported that requires verification, it must be requested using form DFA-6. Failure to provide the requested verification results in Assistance Group closure or loss of deduction after advance notice.

WV IMM §2.2.B establishes that all changes reported directly by an AG member must be acted upon. When decreases in same source reported income are not verified, the client's benefits remain the same.

WV IMM §2.2.B.3 the Bureau of Child Support Enforcement is considered a third party source. Information received from the BCSE is not considered verified upon receipt. The Department worker must verify unclear information received from the BCSE by issuing a DFA-6 or verification checklist.

WV IMM §10.4.A outlines the budgeting method workers are to use in determining monthly SNAP benefits. For all cases, the worker is instructed to determine the monthly amount of income that can be reasonably anticipated for the Assistance Group. The total monthly income received in the household is then used to determine the benefits which are to be issued on a monthly basis.

WV IMM §10.4.A.4 requires the Department worker to average income which fluctuates from month-to-month to determine an average monthly amount. The purpose of finding an average amount is to even out the highs and lows in the amount of income. The client is not 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/she would if actual income was received and sometimes 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/her judgment, the fluctuation will significantly impact the benefit amount. 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.

WV IMM §10.4.D.10 defines irregular income as any income which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of \$30.00. Irregular income is excluded from the budget in determining SNAP eligibility.

DISCUSSION

On October 27, 2014, the Claimant completed a required Interim Contact Report and indicated that she was no longer receiving child support income and that she had not received any child support in the month of October 2014.

A review of payment history demonstrates that the Claimant did receive child support direct payments and arrearages in the month of October, but not until the 28th of the month, after she completed her Interim Contact Report.

The Claimant did not receive any child support or arrearages in the month of November 2014.

The Claimant spoke with another case worker on or about December 8, 2014, who noted that the Claimant did not receive child support in the month of November 2014, but there was no indication that the worker acted on the Claimant's reported decrease in child support income.

The Claimant contended that her child support income should not be counted because it is irregular. Policy defines irregular income as income that is not in excess of \$30 quarterly. The Claimant's child support received is in excess of \$30 per quarter and is not defined as excluded irregular income.

Evidence established that the child support direct payments and arrearages received by the Claimant fluctuate. Policy requires fluctuating income to be averaged. Case comments by the Department worker indicate that the Claimant received child support in 2 out of 3 months, but do not indicate that an average of child support direct payments and arrearages was obtained. In December 2014, another worker reviewed the Claimant's child support payment history and indicated that while no payments were received in November 2014, child support payments were received every month from April 2014 through October 2014.

Although case comments indicated that child support income should be averaged, there was no evidence that any worker actually determined the average child support income (direct payments and arrearages) received by the Claimant. It is unknown how the monthly amount of child support was determined by the Department.

A review of payment history shows that in the time period from November 2013 through October 2014, the Claimant received no child support payments in November 2013, December 2014, January 2014 and November 2014. Child support payments less than the court ordered amount were received in February 2014, March 2014, April 2014 and May 2014. The payment history illustrates that the amount of child support direct payments and arrearages received on a monthly basis varied and should be averaged using either a three month or six month average. There is no indication that the Department averaged the Claimant's child support income at the time of review in November 2014, nor when she again reported the change in December 2014.

CONCLUSIONS OF LAW

- 1) The Claimant's child support direct payments and child support arrearages are defined by policy as fluctuating income and must be averaged.
- 2) Evidence submitted in this case reveals that the Department incorrectly calculated the Claimant's monthly income received through child support direct payments and child support arrearages as required by policy for fluctuating income.

DECISION

It is the decision of the State Hearing Officer that this matter is hereby **remanded** to the Department to calculate the Claimant's child support income based upon the average of the fluctuating child support income and arrearages.

ENTERED this ____ Day of January 2015.

Donna L. Toler
State Hearing Officer