



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

March 16, 2017



RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1181

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Rhonda Compton, WV DHHR, [REDACTED] County Office

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

██████████,

Appellant,

v.

ACTION NO.: 17-BOR-1181

**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' (WV DHHR) Common Chapters Manual. This fair hearing was convened on March 7, 2017, on an appeal filed January 31, 2017.

The matter before the Hearing Officer arises from the January 11, 2017 decision by the Respondent not to increase the Appellant's monthly allotment of Supplemental Nutrition Assistance Program (SNAP) benefits in January 2017, after her husband lost his income.

At the hearing, the Respondent appeared by Representative Rhonda Compton, Economic Service Worker. The Appellant appeared *pro se*. The participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Case recordings from Appellant's SNAP case record, dated December 12, 2017 to February 1, 2017
- D-2 Application for the Low-Income Energy Assistance Program (LIEAP), dated December 12, 2016, with attached income verification

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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 and her husband were recipients of SNAP benefits. In connection with an application for another benefit, the Low-Income Energy Assistance Program (Exhibit D-2), the Appellant informed the Department in December 2016 that her husband had undergone surgery on December 9, 2016, and was under his physician's orders to remain off work until further notice.
- 2) The Appellant completed a SNAP telephone review on January 10, 2017 (Exhibit D-1). During this review, she reported again that her husband was under doctor's orders to remain off work. She verified his rate of pay and his physician's orders to remain off work.
- 3) The Appellant's husband is a substitute bus driver for [REDACTED] County Schools. As a substitute, he was paid for days worked, not a regular salary.
- 4) The Department increased the Appellant's monthly SNAP benefit allotment beginning in February 2017. The Appellant submitted a fair hearing request based on the Department's failure or refusal to increase the SNAP benefit allotment beginning in January 2017.

APPLICABLE POLICY

WV Income Maintenance Manual (WV IMM) Chapter 10, §10.4.A.3 reads as follows in part:

When the client reasonably expects to receive income from a new source during the new certification period, or when the amount of income from an old source is expected to change, the Worker must consider the income which can be reasonably expected to be received . . . If the amount of income cannot be reasonably anticipated . . . income from this source is not considered for the new certification period.

WV IMM Chapter 10, §10.4.A.4 reads as follows in part: "When income from an old source is not expected to continue into the new certification period, it will never be used."

WV IMM Chapter 10, §10.4.A.5 reads as follows in part:

There is one exception to the rules . . . above. It applies to both applicants and recipients and requires use of actual income instead of conversion or proration of it.

a. Applicants

When:

- The first month of eligibility meets the definition of an initial month, i.e. the first month following any period of time in which the AG was not participating; and

- An income source terminates in the month of application or in the 30 days prior to the date of application, income from this source must not be converted to a monthly amount. Instead, the Worker must use the actual amount already received from the terminated source in the month of application plus the amount expected to be received from this source later in the month of application. This is the amount used as income for the month of application. Income from this source for the past 30 days or from the month of application must not be used to convert the terminated income to a monthly amount.

b. Recipients

When:

- A client reports the beginning or ending of a source of income; and
- The client is not expected to receive a full month's income, i.e., the appropriate number of payments within the month, income from this source must not be converted to a monthly amount. Instead, the Worker must use the actual amount of income. If income from the source is ending, no income from the source is counted in future months. Income from this source for the past 30 days or from the current month must not be used to convert the terminated income to a monthly amount. If the income from the source is beginning, the Worker must use income already received from the source plus the amount expected to be received from this source later in the month. This is the amount used as income for the month following the change. Income from this first month must not be used to convert the income to a monthly amount until the second month following the change.

DISCUSSION

The Appellant testified during the hearing that she called the Department in December 2016 to report her husband had undergone surgery on December 9, 2016, and was under doctor's orders to stay off work until his physician released him. At the time of the hearing, he had not been released to return to work.

The Department's representative testified that she did not recall receiving such a telephone call in December 2016. She submitted case recordings from the Appellant's SNAP case record from December 12, 2016, through February 1, 2017 (Exhibit D-1). No information regarding the Appellant's husband undergoing surgery is contained in these recordings.

The Appellant's husband worked as a substitute school bus driver for [REDACTED] County Schools. As such, he only was paid for days he worked as a substitute driver. He had no sick leave or

other means of payment in the event he was not able to work. Therefore, if he did not work then he did not get paid.

Policy found in the WV DHHR Income Maintenance Manual, chapter 10, §§10.4.A.3 and 10.4.A.4 states that income that “cannot be reasonably anticipated” is not considered for the new certification period. Policy from §10.4.A.5 states that if a recipient does not anticipate a full month’s income because the income source is ending, the worker should use the actual amount of income.

The Appellant and the Department’s representative presented contradictory testimony during the hearing. The Department’s representative testified she had no recollection of the Appellant calling her in December 2016 to report that her husband was not working, and she presented case recordings to indicate she did not note such a telephone call. The Appellant testified that she called in December to report her husband was under physician’s orders to remain off work.

Rather than attempting to speculate as to the veracity of either statement, the Board of Review will defer to the Appellant. The decision to not increase the Appellant’s SNAP benefits for January 2017 is reversed. The matter is remanded to the ██████████ County DHHR, Income Maintenance Unit, to calculate the Appellant’s SNAP benefits due her household for January 2017 using the actual amount of income her household received that month.

CONCLUSION OF LAW

Pursuant to WV IMM §10.4.A.5, the Department did not act correctly when it failed to increase the Appellant’s monthly SNAP allotment for January 2017. The January 2017 benefits should be calculated based on the household’s actual income received that month.

DECISION

It is the decision of the state Hearing Officer to **reverse** the Department’s decision not to increase the Appellant’s monthly SNAP benefit allotment and to **remand** the matter of the back to the ██████████ County DHHR, Income Maintenance Unit, to calculate the amount of SNAP benefits due the Appellant for January 2017 based on the actual income the Appellant’s household received that month.

ENTERED this 16th Day of March, 2017.

Stephen M. Baisden
State Hearing Officer