



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL**

**Jim Justice  
Governor**

**BOARD OF REVIEW  
416 Adams St.  
Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 79326**

**Bill J. Crouch  
Cabinet Secretary**

October 20, 2017



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 17-BOR-2444

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson  
State Hearing Officer  
State Board of Review

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

cc: Jill Metz

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

██████████,

**Appellant,**

v.

**ACTION NO.: 17-BOR-2444**

**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 October 12, 2017, on an appeal filed August 24, 2017.

The matter before the Hearing Officer arises from the August 17, 2017 decision by the Department to terminate the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits due to an increase in income and decrease in number of persons eligible for SNAP in the Appellant's Assistance Group (AG). During the fair hearing, the parties agreed that the WorkForce West Virginia (WorkForce) sanction had been removed and the issue of the Appellant's SNAP benefit termination due to an increase in income and a decrease in eligible members of her AG had been resolved. The remaining issue of the hearing arose from the Department's delay in acting on a change reported in an AG member's employment status.

At the hearing, the Respondent appeared by Jill Metz, Economic Service Worker. Appearing as witness for the Respondent was Ila Dee Galloway, Economic Service Worker. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**Department's Exhibits:**

D-1 Notice packet including Notices advising WorkForce registration requirement, dated June 28, 2018 and July 3, 2017; Notice of penalty, dated August 17, 2017; and Notice of decrease, dated August 17, 2017

**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 following Findings of Fact are set forth.

**FINDINGS OF FACT**

- 1) The Appellant was a recipient of SNAP benefits. (Exhibit D-1 and D-2)
- 2) On August 24, 2017, the Appellant requested a fair hearing to contest the decision by the Respondent to terminate the Appellant's SNAP. The initial issue before the Board of Review was resolved by the parties prior to the hearing.
- 3) On August 24, 2017, the Respondent received the Appellant's request for fair hearing.
- 4) The August 24, 2017 request for fair hearing reflected that on July 8, 2017, a change of information form reporting employment, vehicle, and expenses was submitted to the Respondent via email.
- 5) When the Appellant's case worker did not respond regarding the AG member's reported change, the Appellant telephoned her case worker's supervisor on an unknown date after September 11, 2017, and reported that a change in an AG member's employment status had occurred.
- 6) The Appellant was advised via telephone by her case worker's supervisor that a change in reporting form had not been submitted by the Appellant and that the Appellant's SNAP benefit allotment could not be calculated until the AG member's employment income verification was received.
- 7) Policy does not exclude email as a form of written communication for change reporting.
- 8) Reported changes from an AG member, in writing, and via telephone are considered reported changes for SNAP and require follow-up or action for all AGs.
- 9) The Respondent received a written notification reporting the change in the AG member's employment status when the Appellant submitted her written request for fair hearing on August 24, 2017.

- 10) When made aware that the AG's circumstances had changed, the Respondent had an obligation to notify the Appellant in writing of the verification documents needed and a deadline by which to submit the documents.
- 11) No evidence or testimony was provided to demonstrate that the Respondent had issued a written notice advising the Appellant to submit verification of the AG member's income to the Respondent.
- 12) The Respondent failed to notify the Appellant of the deadline for submission of employment income verification.
- 13) During the fair hearing, the parties agreed that the Appellant would submit employment income verification to the Respondent's local office on the date of the hearing, to be scanned and entered into the Respondent's record.
- 14) During the fair hearing, the Respondent agreed to recalculate the Appellant's SNAP allotment and issue a notice advising the Appellant of the updated entitlement amount once employment income verification was received.

### **APPLICABLE POLICY**

#### **West Virginia Income Maintenance Manual (WVIMM) §1.2. E. provides in part:**

The client's responsibility is to provide information about her circumstances so the Worker can make a correct decision about her eligibility.

#### **WVIMM §2.2 B.2(b) provides in part:**

The following are considered reported changes for SNAP and require follow up and/or action for all AGs.

- Communication from an AG member, such as an office visit, telephone call or written statement to report a change for any program of assistance in RAPIDS...

#### **WVIMM §2.2 C provides that:**

The first month that a reported change is effective is the month following the month the change is reported. The only exception to this is when the Department had the information prior to the month it is reported and failed to act on the information in a timely manner...

#### **2) Decrease in Benefits**

When the reported change results in a decrease in benefits, the change is effective the following month, if there is time to issue advanced notice. If

not, the change is effective 2 months after it occurs. No claim is established unless the client failed to report in a timely manner and this is the only reason the change could not be made within 13 days.

**WVIMM §4.2 B provides in part:**

When information received is questionable the worker is required to verify the source and amount of earned income. All income used in calculating eligibility and the amount of the benefit must be verified...

**WVIMM §6.3 A provides in part:**

DFA-6, Notice of Information Needed...:

If, at...the time of any other change in client's circumstances, it becomes clear that additional information or verification is needed, the DFA-6 is used to notify the client in writing of the needed information and the date by which the information must be received...

1. Case Maintenance for All Programs

The date entered must be no earlier than 10 days from the date the DFA-6 is completed.

If the client fails, without good cause, to provide the information by the established date, a DFA-NL-C must be sent to notify the client of the failure and the resulting case action.

**West Virginia Common Chapters (WVCC) §710.17 provides in part:**

- A. Once a fair hearing request is received by the office or bureau that issued the adverse action, that office or bureau shall, within two business days, send a referral packet to the Board of Review central office...

**WVCC §710.20 provides in part:**

- B. Withdrawal: A request for hearing shall be considered withdrawn when the Appellant withdraws the request in writing or orally. When an Appellant withdraws a hearing request orally, the Department representative shall notify the Board of Review central office of the date and the reason for the withdrawal. The Hearing Official or Board of Review central office shall then send a letter confirming the withdrawal and giving the Appellant 13 days from the date of the letter to retract the withdrawal. If the withdrawal is retracted within 13 days, the case will revert to the status that existed at the time of the withdrawal.

## **DISCUSSION**

The Appellant was a recipient of SNAP benefits. The Appellant initially requested a fair hearing to contest the termination of her SNAP benefits. During the hearing, the parties agreed that the issue of the SNAP termination and WorkForce registration sanction had been resolved. The remaining issue of the hearing was the determination of whether the Respondent had taken appropriate action to notify the Appellant that employment income verification information was needed to determine the Appellant's SNAP benefit allotment.

Policy requires that all income used in calculating eligibility and the amount of benefits must be verified by the Respondent. Pursuant to policy, upon a change occurring in the AG's circumstances that requires verification, the Respondent is obligated to issue a notice to the Appellant in writing advising the Appellant of the verification information needed and providing a date no earlier than 10 days from the date of the notice by which the information must be received. Pursuant to policy, the Appellant has a responsibility to provide information about her circumstances so that the Respondent can make a correct decision about her eligibility for SNAP benefits. The Appellant argued that she had contacted the Respondent by email to submit the income verification but received no response from the Respondent that the documents were received. The Appellant contended that she notified her case worker's supervisor of the employment status change by phone and advised the Respondent that the employment income verification had been submitted to the Appellant's worker via email. The Respondent contended that their records demonstrated that the Appellant's email submission of employment income verification was not received and proffered that the Appellant should submit the change and employment income verification to the local office, in person, and not to the worker directly by email.

Policy provides that reported changes through communication from an AG member, such as an office visit, telephone call, or written statement reporting a change for any program of assistance require follow up or action by the Respondent. Policy does not exclude email as a form of communication. On August 24, 2017, the Appellant wrote on her request for fair hearing that she had reported a change in her son's employment, car, and expenses to the Respondent via email on July 8, 2017. The Respondent testified that they had no record of a reported employment status change for the Appellant's AG and that a change reporting form was needed. Policy does not specify that changes in the AG circumstances can only be submitted to the Respondent on a change reporting form at the local office. Even if the Respondent had not received the reported change via email on July 8, 2017, it is undisputed that the Respondent received the Appellant's August 24, 2017 request for fair hearing. The Appellant met her responsibility to report a change in the employment status of an AG member by documenting the change on the August 24, 2017 request for fair hearing and submitting it to the Respondent. After receiving the August 24, 2017 request for fair hearing, the Respondent took no action to issue a notice to the Appellant advising her of additional income verification needed. It was not contested during the hearing that the Appellant advised her case worker's supervisor of a change in the AG's employment status via telephone call on an unknown date after September 11, 2017. The Respondent did not accept the Appellant's change report via telephone as policy allows, further delaying action to issue written notice to the Appellant requesting employment income verification and delaying the calculation of the Appellant's SNAP allotment. During the hearing, the parties agreed that the Appellant would submit employment income verification documents directly to the local office and that the

Respondent would calculate the Appellant's current benefit entitlement and issue a benefit notice to the Appellant as soon as the documents were received.

The Respondent has a responsibility to submit all hearing requests received to the Board of Review for processing. The Respondent's evidence reflected hearing evidence packets preceding the date of the Appellant's request for fair hearing on record with the Board of Review. The Respondent testified that the document logged on July 11, 2017, was a withdrawal of a previous request for fair hearing by the Appellant. The Board of Review does not have record of a fair hearing request withdrawal prior to the Appellant's August 24, 2017 request for fair hearing. The Respondent's gross disregard of procedure when processing fair hearing requests and withdrawals violated the Appellant's right to due process and diminished the credibility of the evidence provided by the Respondent in the matter before the Board of Review. The Respondent should become familiar with the appropriate procedure for processing fair hearing requests and ensure that their client's right to due process is not violated in the future.

### **CONCLUSIONS OF LAW**

- 1) The initial issue regarding the termination of the Appellant's SNAP benefits was resolved prior to the hearing and there is no further relief available through the Board of Review.
- 2) The Appellant met her responsibility to report a change in the AG member's employment status by communicating the change to the Respondent in writing on the August 24, 2017 request for fair hearing.
- 3) Policy requires that when a change in circumstance occurs that requires verification, the Respondent is obligated to issue a written notice advising the Appellant of the verification information needed and providing the Appellant with a deadline no earlier than 10 days from the date of the notice for which the information must be received.
- 4) The Respondent did not issue proper notice to the Appellant of the verification information needed and did not provide the Appellant with a deadline by which the information should have been received.
- 5) Policy requires the first month that a reported change is effective is the month following the month the change is reported, if there is time to issue advanced notice. If not, the change is effective 2 months after it occurs.
- 6) During the hearing, the parties agreed that the Appellant would submit employment income verification documents to the Respondent's local office and that the Respondent would recalculate the Appellant's benefit entitlement once the income verification documents were received.

## **DECISION**

Because the work requirement penalty was removed and the Appellant's SNAP benefits were restored prior to the onset of the fair hearing, no further relief is available through the Board of Review in the matter of the termination of the Appellant's SNAP benefits as outlined in the August 17, 2017 notice.

With respect to the Department's delay in processing the Appellant's reported changes, if the submission of income verification has not been resolved at the time of this decision, the matter is hereby **REMANDED** to the Department to issue proper notice to the Appellant requesting needed verifications and re-calculate the Appellant's SNAP benefits once the Department receives the requested employment income verifications. The Department shall mail the Appellant notice of its benefit allotment decision and include a fair hearing request with the notice.

ENTERED this 20th day of October 2017.

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**Tara B. Thompson**  
State Hearing Officer