



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

**Jim Justice
Governor**

**Bill J. Crouch
Cabinet Secretary**

**Esta es la decision de su Audiencia Imparcial. La decision del
Departamento ha sido confirmada/invertido/remitido. Si usted
tiene preguntas, por favor llame a Phillip Owens, 304-267-0100,
ext. 71054**

November 29, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR, ACTION NO.: 17-BOR-2666

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 Officer
Member, State Board of Review

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

cc: Peter VanKleeck, BCF, [REDACTED] Co. DHHR

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

██████████,

Appellant,

v.

Action No.: 17-BOR-2666

**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 November 16, 2017, on an appeal filed October 16, 2017.

The matter before the Hearing Officer arises from the Respondent's September 15, 2017 notice of Supplemental Nutrition Assistance Program (SNAP) benefit reduction.

At the hearing, the Respondent appeared by Peter VanKleeck, Economic Services Supervisor. The Appellant appeared *pro se*. The witnesses were sworn and the following documents were admitted into evidence:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Notice (EDR1) of SNAP decrease, dated September 15, 2017
- D-3 West Virginia Income Maintenance Manual, Chapter 10, Appendix A (effective June 2017)
- D-4 West Virginia Income Maintenance Manual, Chapter 10, Appendix A (effective October 2017)
- D-5 Screen print of SNAP Budget from Appellant's eRAPIDS case for payment begin date of March 1, 2017
- D-6 Screen print of SNAP Budget from Appellant's eRAPIDS case for payment begin date of October 1, 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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Supplemental Nutrition Assistance Program is governed by federal laws and regulations of the U.S. Department of Agriculture Food Nutrition Services (USDA FNS).
- 2) On October 1, 2017, the Respondent initiated Federal adjustments to SNAP standards and allotments mandated by the USDA FNS.
- 3) These adjustments included increases in the standard deduction and the utility amount used to calculate monthly SNAP allotments, along with a reduction in the maximum SNAP benefit allotment. (Exhibit D-4)
- 4) Federal policy does not require notice of adverse action resulting from the Federal adjustments to allotments. (7 CFR §271.7(d)(4) and §271.13(b)(1))
- 5) Federal policy allows States to provide some type of written notification of the mass change. (7 CFR §271.12(e)(ii))
- 6) The Federal adjustment to allotments effective October 1, 2017, affected the Appellant's SNAP allotment by a decrease of two (2) dollars. The Respondent sent the Appellant notice of the reduction on September 15, 2017. The notice stated that the reason for the reduction in his SNAP benefits is that "The Standard Deduction amount applied to the SNAP income has changed. Your deduction for shelter and/or utility costs is higher." The applicable policy sections cited on the notice were "Chpt 10 App B 10.4.B-C". (Exhibit D-2)
- 7) The budget section of the notice showed that the Appellant's SNAP allotment was calculated based upon the maximum standard deduction, the maximum utility amount, and the maximum SNAP benefit allotment available to the Appellant as a result of the October 1, 2017 Federal adjustment to allotments. (Exhibit D-2)
- 8) The Appellant did not contest the amounts used in the calculation of his monthly SNAP allotment.

APPLICABLE POLICY

Federal Code of Regulations, 7 CFR §273.12, Reporting Requirements, explains, in part:

(e) *Mass changes*. Certain changes are initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include, but are not limited to, adjustments to the income eligibility standards, the shelter

and dependent care deductions, the maximum SNAP allotment and the standard deduction; annual and seasonal adjustments to State utility standards; periodic cost-of-living adjustments to Retirement, Survivors, and Disability Insurance (RSDI), Supplemental Security Income (SSI) and other Federal benefits; periodic adjustments to Temporary Assistance for Needy Families (TANF) or General Assistance (GA) payments; and other changes in the eligibility and benefit criteria based on legislative or regulatory changes.

(1) *Federal adjustments to eligibility standards, allotments, and deductions, and State adjustments to utility standards.* (i) State agencies shall implement these changes for all households at a specific point in time. Adjustments to Federal standards shall be implemented prospectively regardless of the household's budgeting system. Annual and seasonal adjustments in State utility standards shall also be implemented prospectively for all households.

(A) Adjustments in the maximum SNAP allotment shall be effective in accordance with §273.10(e)(4)(ii).

(B) Adjustments in the standard deduction shall be effective in accordance with §273.9(d)(1).

(C) Adjustments in the shelter deduction shall be effective in accordance with §273.9(d)(6).

(D) Adjustments in the income eligibility standards shall be effective in accordance with §273.9(a)(3).

(ii) A notice of adverse action shall not be used for these changes. At a minimum, the State agencies shall publicize these mass changes through the news media; posters in certification offices, issuance locations, or other sites frequented by certified households; or general notices mailed to households. At its option, the State agency may send the notice described in paragraph (e)(4) of this section or some other type of written explanation of the change. A household whose certification period overlaps a seasonal variation in the State utility standard shall be advised at the time of initial certification of when the adjustment will occur and what the variation in the benefit level will be, if known.

(2) *Mass changes in public assistance and general assistance.* (i) When the State agency makes an overall adjustment to public assistance (PA) payments, corresponding adjustments in households' SNAP benefits shall be handled as a mass change in accordance with the procedures in paragraphs (e) (4), (5) and (6) of this section. When the State agency has at least 30 days, advance knowledge of the amount of the PA adjustment, the State agency shall make the change in benefits effective in the same month as the PA change. If the State agency does not have sufficient notice, the SNAP change shall be effective no later than the month following the month in which the PA change was made.

Federal Code of Regulations, 7 CFR §271.7, Allotment Reduction Procedures, states, in part:

(d) *Implementation of allotment reductions* — (1) *Reductions.* (i) If a decision is made to reduce monthly SNAP allotments, FNS shall notify State agencies of the date the reduction is to take effect and by what percentage maximum SNAP allotments amounts are to be reduced. (ii) Upon receiving notification that a reduction is to be made in an upcoming

month's allotment, State agencies shall act immediately to implement the reduction. Such action could differ from State to State depending on the nature of the issuance system in use. Where there are computerized issuance systems, the program used for calculating allotments shall be altered to reflect the appropriate percentage reduction in the maximum SNAP allotments for each household size and the computer program shall be adjusted to allow for the minimum benefit for one- and two-person households. The computer program shall also be adjusted to provide for the rounding of benefit levels of \$1, \$3 and \$5 to \$2, \$4 and \$6, respectively. FNS will provide State agencies with revised issuance tables reflecting the percentage reductions to be made in the maximum SNAP allotments amounts and reduce maximum SNAP allotments levels. In States where manual issuance is used, State agencies shall reproduce the issuance tables provided by FNS and distribute them to issuance personnel. State agencies shall ensure that the revised issuance tables are distributed to issuance agents and personnel in time to allow benefit reductions during the month ordered by FNS.

...

(3) *Affected allotments.* Whenever a reduction of allotments is ordered for a particular month, reduced benefits shall be calculated for all households for the designated month.

(4) *Notification of eligible households.* Reductions, suspensions and cancellations of allotments shall be considered to be Federal adjustments to allotments. As such, State agencies shall notify households of reductions, suspensions and cancellations of allotments in accordance with the notice provisions of §273.12(e)(1), except that State agencies shall not provide notices of adverse action to households affected by reductions, suspensions or cancellations of allotments. [Emphasis added]

...

(f) *Fair hearings.* Any household that has its allotment reduced, suspended or cancelled as a result of an order issued by FNS in accordance with these rules may request a fair hearing if it disagrees with the action, subject to the following conditions. State agencies shall not be required to hold fair hearings unless the request for a fair hearing is based on a household's belief that its benefit level was computed incorrectly under these rules or that the rules were misapplied or misinterpreted. State agencies shall be allowed to deny fair hearings to those households who are merely disputing the fact that a reduction, suspension or cancellation was ordered. Furthermore, since the reduction, suspension or cancellation would be necessary to avoid an expenditure of funds beyond those appropriated by Congress, households do not have a right to a continuation of benefits pending the fair hearing. A household may receive retroactive benefits in an appropriate amount if it is determined that its benefits were reduced by more than the amount by which the State agency was directed to reduce benefits.

Federal Code of Regulations, 7 CFR §273.13, Notice of Adverse Action, states in part:

(b) *Exemptions from notice.* Individual notices of adverse action shall not be provided when:

(1) The State initiates a mass change through means other than computer matches as described in §273.12(e)(1), (e)(2), or (e)(3)(i).

West Virginia Income Maintenance Manual (IMM) §10.4.B enumerates allowable disregards and deductions from gross income in calculating the monthly SNAP allotment an Assistance Group (AG) is eligible to receive. 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. 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 costs/SUA exceed 50% of the remaining income, the amount in excess of 50% is deducted. The deduction cannot exceed the shelter/utility cap found in Appendix B. The process of determining eligibility and the amount of the benefit differs when an AG member is elderly or disabled. When at least one AG member is elderly, which is at least age 60, or disabled as specified in Section 12.15, eligibility is determined by comparing the countable income to the maximum net monthly income found in Appendix A.

DISCUSSION

The Supplemental Nutrition Assistance Program is governed by the U.S. Department of Agriculture Food Nutrition Services (USDA FNS). The USDA FNS determines the guidelines for States to use for budgeting purposes, including, but not limited to, allowable deduction amounts and maximum SNAP issuance amounts. From time-to-time, the USDA FNS agency adjusts these amounts and the states are required to apply these changes to all the recipients and applicants in the State. Reductions, suspensions and cancellations of allotments affected by these changes are considered Federal adjustments to allotments. The states are not required to send notices of adverse action due to these Federal adjustments to allotments. (See, 7 CFR §273.13)

The USDA FNS set forth changes to be used in calculating SNAP benefit allotments effective October 1, 2017. These changes included increases in the standard deduction and the utility amount, and decreases in the maximum SNAP benefit allotments. The Respondent opted to send notice to the Appellant on September 15, 2017, that his SNAP benefits were being reduced due to changes in the standard deduction and utility amounts.

At the hearing, it was established that the Appellant contested the adverse action notice letter sent by the Respondent on September 15, 2017. The Appellant did not dispute the amounts used in the calculations as suggested by his October 16, 2017 hearing request. Instead, he was dissatisfied with the notice he was sent regarding the changes. Although notice was not required by Federal law, the Respondent did send the Appellant notification of the reduction which included the

calculations reflecting the Federal adjustments to the SNAP. Specifically, it showed the maximum standard deduction allowed by the change, the maximum utility amount standard allowed by the change, and the maximum SNAP benefit allotment available to the Appellant as a result of the calculations.

CONCLUSIONS OF LAW

- 1) On October 1, 2017, the Federal adjustment to SNAP allotments was implemented by the Respondent.
- 2) The Respondent was not required by Federal policy to send notice of adverse action resulting from the Federal adjustment to allotments.
- 3) The Respondent opted to send the Appellant notice of the reduction to his SNAP allotment due to the Federal adjustment to SNAP allotments.
- 4) The Respondent correctly calculated the Appellant's monthly SNAP benefit allotment reflecting the October 1, 2017 Federal adjustments to allotments.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's determination to reduce the Appellant's monthly SNAP allotment based on the Federal adjustment to allotments effective October 1, 2017.

ENTERED this 29th day of November 2017.

Lori Woodward, State Hearing Officer