



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

**Bill J. Crouch
Cabinet Secretary**

**Board of Review
PO Box 1247
433 Mid Atlantic Parkway
Martinsburg, West Virginia 25402**

**M. Katherine Lawson
Inspector General**

February 6, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
BOR ACTION NO.: 17-BOR-3009

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: John Oglesbee, BCF, [REDACTED] Co. DHHR

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

██████████,

Appellant,

v.

Action Number: 17-BOR-3009

**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 25, 2018, on an appeal filed December 20, 2017.

The matter before the Hearing Officer arises from the Respondent's November 2, 2017 Supplemental Nutrition Assistance Program (SNAP) benefit determination.

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

Department's Exhibits:

None

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 SNAP benefits.
- 2) The Appellant's two children were previously included in her SNAP Assistance Group (AG).
- 3) The Appellant's children attend school in the state of [REDACTED]
- 4) The father of the Appellant's children lives in the state of [REDACTED]
- 5) In May 2017, the Respondent received information during the Appellant's certification period that her two children were not residing in her household.
- 6) During the Appellant's SNAP recertification in October 2017, the Respondent determined that the Appellant's children were not residents of the state of West Virginia.
- 7) The Appellant's SNAP benefits were recertified as an AG of one (1) beginning November 2017.
- 8) The Appellant requested a fair hearing on or about December 18, 2017, on the issue of the exclusion of her two children from her SNAP AG.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (IMM) §2.2, requires a client be a resident of West Virginia, to be eligible to receive benefits. The client must live within the borders of West Virginia for purposes other than vacation. There is no minimum time requirement for how long the client must live or intends to live in West Virginia. The client is not required to maintain a permanent or fixed dwelling. An individual remains a resident of the former state until he arrives in West Virginia with the intention of remaining indefinitely. Therefore, intent to establish or abandon residency must be known before the state of residence is determined.

IMM §3.2.1.A.4, explains that natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent. There is no required maximum/minimum amount of time the child must spend with a parent for the child to be included in the SNAP AG. If no one is receiving any SNAP benefits for the child, it is assumed that the living arrangements are not questionable, and the child is added to the SNAP AG that wishes to add him. If the child is already listed in another SNAP AG or the other parent wishes to add the child to his SNAP AG, the parents must agree as to where the child "lives" and, ultimately, to which SNAP AG he is added. Where the child receives the majority of his meals, or the percentage of custody, must not be the determining factor for which parent receives SNAP for the child. [Emphasis added]

IMM §1.3.1.A.3, explains that when the Worker does not have sufficient information to plan, it is necessary for the worker to complete form DFA-6 or verification checklist to inform the applicant of the additional information needed. All requests for verification must be made using the DFA-6 form and/or verification checklist. The Worker must clearly state on the form what items must be returned by the applicant, as well as the date by which the information must be returned. The applicant's failure to return information or the return of incomplete or incorrect information that prevents a decision from being made on the application will be considered failure to provide verification and will result in a denial of the application.

IMM §7.2.1, explains that verification of a client's statement is required when:

- Policy requires routine verification of specific information.
- The information provided is questionable. To be questionable, it must be:
 - Inconsistent with other information provided; or
 - Inconsistent with the information in the case file; or
 - Inconsistent with information received by the Department of Health and Human Resources (DHHR) from other sources; or
- Incomplete; or
- Obviously inaccurate; or
- Outdated.
- Past experience with the client reveals a pattern of providing incorrect information or withholding information. A case recording must substantiate the reason the Worker questions the client's statement.
- The client does not know the required information.

IMM §7.2.3, establishes that the primary responsibility for providing verification rests with the client. It is an eligibility requirement that the client cooperate in obtaining necessary verifications, with an exception being that a client must never be asked to provide verification that he is or is not either a fleeing felon or a probation/parole violator. The client is expected to provide information to which he has access and to sign authorizations needed to obtain other information. Failure of the client to provide necessary information or to sign authorizations for release of information results in denial of the application or closure of the active case, provided the client has access to such information and is physically and mentally able to provide it.

IMM §7.3(41), ***Joint Custody, Which Parent Will Receive Benefits for Child***, explains for SNAP, verification is required at redetermination only when questionable. Possible sources of verification are listed as statements from parents, collateral statements from friends, neighbors, family, and a court order.

IMM §1.4.1.A, directs that if an applicant AG fails to provide the verifications requested on the DFA-6 or verification checklist within the specified time limit and the application is denied, the AG must be given an opportunity to have its eligibility established for up to 60 days from the date of application without completion of a new form. If the client brings in the verifications before the 60-day period has expired, the Worker determines the AG's eligibility based on the original application, noting in Case Comments any changes which have occurred since the form was completed. If the application is approved, SNAP benefits are not retroactive to the date of application because the approval delay was the fault of the client. Benefits are issued from the

date the client provides the verification. The Worker provides benefits using information reported during the original application and any other pertinent information provided prior to approval.

Code of Federal Regulations (CFR), Title 7, Section 273.3 in part, explains, (a) A household shall live in the State in which it files an application for participation ... The residency requirements of §273.3 shall be verified except in unusual cases (such as homeless households, some migrant farmworker households, or households newly arrived in a project area) where verification of residency cannot reasonably be accomplished. Verification of residency should be accomplished to the extent possible in conjunction with the verification of other information such as, but not limited to, rent and mortgage payments, utility expenses, and identity. If verification cannot be accomplished in conjunction with the verification of other information, then the State agency shall use a collateral contact or other readily available documentary evidence. Documents used to verify other factors of eligibility should normally suffice to verify residency as well. Any documents or collateral contact which reasonably establish the applicant's residency must be accepted and no requirement for a specific type of verification may be imposed. No durational residency requirement shall be established.

7 CFR §273.2(f)(4)(iv), notes that where unverified information from a source other than the household contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. The State agency may, if it chooses, verify the information directly and contact the household only if such direct verification efforts are unsuccessful. If the unverified information is received through the IEVS, as specified in §272.8, the State agency may obtain verification from a third party as specified in paragraph (f)(9)(v) of this section.

7 CFR §273.2(f)(5)(i), the household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information.

7 CFR §273.2(f)(5)(ii), whenever documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, the State agency may require a collateral contact or a home visit in accordance with paragraph (f)(4) of this section. The State agency, generally, shall rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, the State agency shall either designate another collateral contact, ask the household to designate another collateral contact or to provide an alternative form of verification, or substitute a home visit. The State agency is responsible for obtaining verification from acceptable collateral contacts.

7 CFR §273.2(f)(8)(i)(D) addresses other information which has changed and allows verification at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. Verification under this paragraph shall be subject to the same verification procedures as apply during initial verification.

7 CFR §273.14(b)(4), information provided by the household shall be verified in accordance with §273.2(f)(8)(i). The State agency shall provide the household a notice of required verification as provided in §273.2(c)(5) and notify the household of the date by which the verification requirements must be satisfied. The household must be allowed a minimum of 10 days to provide required verification information. [Emphasis added] Any household whose eligibility is not determined by the end of its current certification period due to the period allowed for submitting any missing verification shall receive an opportunity to participate, if eligible, within 5 working days after the household submits the missing verification and benefits cannot be prorated.

7 CFR §273.1(a) General household definition: A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section: (ii) A person under 22 years of age who is living [emphasis added] with his or her natural or adoptive parent(s) or step-parent(s).

DISCUSSION

The Appellant was receiving SNAP benefits for herself and her two children. In October 2017, the Appellant completed a review for recertification of her SNAP benefits. The Respondent's representative, John Oglesbee, testified that because information was received by an adult member of the Appellant's household that the Appellant's children did not live with her, she was asked to verify the children's residency on her recertification for SNAP benefits. Mr. Oglesbee testified that because the children were attending school in [REDACTED] and that the Appellant was unable to verify that the children did reside with her, the Respondent recertified the Appellant's SNAP benefits as an AG of one (1).

On or about December 18, 2017, the Appellant contested the exclusion of her children in her SNAP AG, and filed for a fair hearing. Mr. Oglesbee testified that another request for verification of the children's state of residency through a signed statement from the children's father, a copy of her current lease agreement, and current school records for the two children was sent with a due date of January 2, 2018. The Appellant averred that the requested verification was a "violation of her privacy" and felt that she should not have to provide any of the requested verifications.

State and federal policy requires verification of a client's statement specifically when a client's statement is inconsistent with information received by the Department of Health and Human Resources (DHHR), from other sources or if information is outdated. Additionally, policy allows for the Respondent to obtain verification of information from collateral sources. As an applicant or a recipient of SNAP benefits, an eligibility requirement is to assist with and/or agree to allow for verification of information necessary for an eligibility worker to make a proper determination. Therefore, the act of requesting a client/applicant verify unclear or contradicting information is allowed by policy and is not violation of privacy.

However, no documentary evidence was provided at the hearing. Therefore, it is unknown whether the Respondent followed notification requirements in requesting the verification of the children's state of residency on the Appellant's recertification in October 2017. There was no corroborating testimony or documentary evidence introduced at this hearing by either of the parties.

CONCLUSIONS OF LAW

1. Policy requires verification of a client's statement when the information provided is questionable.
2. State and federal policy requires the Respondent to provide the household a notice of required verification and notify the household of the date by which the verification requirements must be satisfied. The household must be allowed a minimum of 10 days to provide required verification information.
3. The Respondent failed to provide documentary evidence that it followed policy in requesting verification from the Appellant at her SNAP recertification in October 2017.

DECISION

It is the decision of the State Hearing Officer to **remand** the case back to the Respondent to provide the Appellant with proper notice of the verification request, allowing the Appellant to provide the requested verification within the policy allowed time-frame. If, after proper notice, the Respondent determines the children do live with the Appellant, then she would be entitled to restoration of benefits beginning in November 2017. If the Respondent renders a decision unfavorable to the Appellant, then she has the right to request a fair hearing on that denial.

ENTERED this 6th day of February 2018.

Lori Woodward, State Hearing Officer