



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

Bill J. Crouch
Cabinet Secretary

**Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326**

Jolynn Marra
Interim Inspector
General

June 25, 2019



RE: [REDACTED] v. WVDHHR
ACTION NO.: 19-BOR-1545

Dear Mr. [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: Appellant's Recourse
Form IG-BR-29

cc: David Griffin, [REDACTED] County DHHR

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

██████████,

Appellant,

v.

ACTION NO.: 19-BOR-1545

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on May 15, 2019 and reconvened on June 18, 2019, on an appeal filed April 8, 2019.

The matter before the Hearing Officer arises from the January 28, 2019 determination by the Respondent to decrease the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by David Griffin, Economic Service Supervisor. Appearing as a witness on behalf of the Respondent was Melanie Koch, Economic Service Worker. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, the Appellant's neighbor. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 eRAPIDS SNAP Budget
D-2 WV State Online Query

Appellant's Exhibits:

A-1 Social Security Administration (SSA) Notice, dated May 21, 2019
A-2 Appellant's Written Requests, dated May 13, 2019

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 is a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits for a one-person Assistance Group (AG).
- 2) The Appellant was receiving an \$88 monthly SNAP benefit allotment for the certification period of October 1, 2018 through September 30, 2020.
- 3) On January 28, 2019, the Respondent issued a notice advising the Appellant that his SNAP monthly allotment would decrease from \$88 to \$78, effective March 1, 2019, due to a \$22 increase in the Appellant's income.
- 4) On April 4, 2019, the Appellant submitted a written Pre-Hearing Conference and/or Fair Hearing Request Form to the [REDACTED] County DHHR. The written reason for hearing request reflected "loss of social security and SNAP benefits."
- 5) The Appellant is a recipient of Social Security Administration (SSA) Retirement, Survivors, Disability Insurance (RSDI) (Exhibit D-2).
- 6) Effective December 2018, the Appellant's RSDI income increased from \$762 monthly to \$784 monthly (Exhibits D-2 and A-1).
- 7) The Respondent used the Appellant's gross unearned income amount of \$784 to determine the amount of the Appellant's monthly SNAP allotment (Exhibit D-1).
- 8) After application of deductions, the Appellant's net monthly income was \$379.50 (Exhibit D-1).
- 9) During the hearing, the Appellant reported that since January 2019, he has paid \$55 monthly in medical expenses for Medicare Part C.
- 10) The Appellant had not previously reported any medical expenses to the Respondent. When the Appellant's January 2019 SNAP allotment determination was made, he had not reported any medical expenses or additional expenses eligible for an income deduction.

APPLICABLE POLICY AND REGULATIONS

Board of Review Authority:

West Virginia Code (WV Code) § 9-2-6(13) provides in part:

The Secretary of the Department of Health and Human Resources (DHHR) may organize with the department a Board of Review, consisting of a chairman appointed by the secretary and as many assistants or employees of the department as may be determined by the secretary and as may be required by federal laws and rules respecting state assistance, federal-state assistance, and federal assistance, [emphasis added] such that the Board of Review may have such powers of a review nature [emphasis added] and additional powers as may be granted to it by the secretary and as may be required by federal laws and rules respecting federal-state assistance and federal assistance.

WV Code §§ 9-1-2(a) through 9-1-2 (c) provides in part:

Federal-State Assistance is defined as aid, care, assistance, and services entitled to a person as authorized by the United States Code or any act of Congress **other than the federal social security act** [emphasis added] for distribution through the state division of human services State assistance, including by way of illustration, surplus food and food stamps.

Federal Assistance is defined as all forms of aid, assistance, and services to or on behalf of persons as authorized by any act of Congress for distribution through the state division of human services, the cost of which is paid entirely out of federal appropriations.

State Assistance is defined as all forms of aid, care, assistance, services and general relief made possible out of state, county and private appropriations to or on behalf of indigent persons authorized to receive the same under the state division of human services rules [emphasis added].

Supplemental Nutrition Assistance Program:

West Virginia Income Maintenance Manual (WVIMM) § 1.2.4 provides in part:

The client's responsibility is to provide complete and accurate information about his circumstances so that the worker is able to make a correct determination about his eligibility.

WVIMM § 4.4.2.A provides in part:

When a client fails to report household expenses that would normally result in a deduction, the AG loses their entitlement to that deduction. They have a right to the expense once it is reported and verified, if required by policy.

WVIMM § 4.4.3.C provides in part:

To determine the SNAP allotment, find the countable income and the number in the AG Appendix C.

WVIMM Chapter 4, Appendix C.2 provides in part:

For a one-person AG with a monthly net income of \$377 through \$380, the monthly SNAP allotment is \$78.

DISCUSSION

Based on an increase in the Appellant's income, the Respondent decreased the Appellant's monthly SNAP allotment, effective January 2019. The Appellant contended that his income has decreased rather than increased. The Appellant testified that the primary basis for the requested hearing was due to a decrease in the amount of his monthly SSA income from \$784 to \$729 and testified that the SNAP allotment decrease was the secondary reason for the hearing request. The Appellant requested clarification of the authority to which the Respondent reduced the amount of his RSDI unearned income, reinstatement of the previous amount of income and SNAP benefits, and reimbursement for five months of Medicare Part C payments garnished from the amount of RSDI income he received. The Appellant additionally made various requests regarding Respondent staffing assignments as addressed below.

The Appellant testified that he submitted documents directly to the Hearing Official as part of his hearing request that the Board of Review did not receive. The Appellant denied that the hearing request document reviewed during the hearing was the document he completed and submitted as a basis for the hearing. The Appellant testified that this Hearing Official altered evidentiary documents submitted on his behalf by his neighbor and omitted this Hearing Official's name from the document. Whereas this Hearing Official took no such action and printed the evidence as submitted by the Appellant's neighbor on his behalf, the Appellant was permitted with the opportunity to review the documents provided to this Hearing Official as evidence. The Appellant removed pages from the evidentiary packet he did not wish for this Hearing Official to consider, and requested admission of the documents labeled as A-2. The Appellant testified that this Hearing Official presided over three hearing interactions with the Appellant. However, this Hearing Official only presided over the instant matter on May 15, 2019 and reconvened on June 18, 2019; therefore, the Appellant's testimony was found to be unreliable. Due to the unreliability of the Appellant's testimony, little weight was given to the Appellant's written narrative account entered into the evidence.

Social Security Administration Income:

During the hearing, the Appellant requested to “be removed from the \$2,000 maximum income limit” and testified that the limit was imposed by the Respondent and subjected the Appellant to a penalty if he exceeded \$2,000 monthly income. The Respondent testified that he was not familiar with a \$2,000 maximum limit and requested that the Appellant to explain the alleged imposed penalty. The Appellant testified that the Respondent worker charged the Appellant for not having Medicare Part C by decreasing the amount of his monthly RSDI income amount because the government had put pressure on her to decrease entitlements. The Appellant was unable to clarify or offer any evidence as to the nature of the \$2,000 maximum income limit. The Respondent testified that neither the Department or Respondent workers have any authority or means of lowering the Appellant’s federal SSA income. The Respondent argued that the Respondent worker took no action to reduce the Appellant’s RSDI income to pay for Medicare Part C and, further, contended that the Appellant’s Medicare Part C status in no way had any relationship to the decrease in the Appellant’s monthly SNAP allotment. The Respondent maintained that the Appellant’s SNAP decrease was directly related to an increase in his income. The Appellant failed to enter any evidence to support his claim that the Respondent had authority or means of decreasing the amount of his monthly RSDI income or of imposing charges for Medicare Part C as a penalty for exceeding a \$2,000 maximum income limit.

The Appellant testified that during the pendency of the hearing, he traveled to the SSA and resolved the RSDI income-reduction issue related to Medicare Part C. The Appellant contended that for a period of five months, due to a direct action by the Respondent worker, his RSDI benefits were decreased by \$55 and requested that his reduced RSDI benefits be reimbursed and that this Hearing Official provide him with an amount of reimbursement that he should expect to receive.

The State Board of Review’s enabling statute provides the legal basis by which the Board of Review must conduct its duties as assigned by the Secretary. The Board of Review’s authority is limited to review of agency actions regarding an entitled individual’s state assistance, federal-state assistance, and federal assistance. Pursuant to WV Code §§ 9-2-6(13), and 9-1-2 (a) through 9-1-2(c), aid, care, and assistance entitlements as authorized by the federal social security act are precluded from review by the Board of Review. As the Board of Review lacks the authority to review the Appellant’s SSA entitlements, this Hearing Officer is unable to grant relief regarding the Appellant’s request to review deductions in his income being withheld by the SSA for Medicare Part C and subsequently, no relief can be granted regarding the Appellant’s request for SSA income withholdings to be reimbursed.

SNAP Decrease:

The Respondent had to prove by a preponderance of evidence that the Appellant’s monthly RSDI benefits increased and that the Respondent correctly reduced the Appellant’s monthly SNAP benefit allotment to \$78. The evidence demonstrated that the Appellant’s RSDI income increased from \$762 monthly to \$784 monthly. The Appellant receives an annual RSDI increase as demonstrated by evidence submitted by both parties. Evidence from both parties further reflected that the Appellant’s gross monthly amount of unearned income equaled \$784. The Appellant did

not dispute receiving an annual income increase or the amounts of RSDI income reflected in the evidence. Further, the Appellant did not contest the Respondent's calculations or deductions used to determine his monthly SNAP allotment amount – he only contested that the Respondent decreased the amount of his SSA income. Once income deductions were applied, the Appellant's net monthly income equaled \$379.50. Pursuant to policy, for a one-person AG with a net monthly income of \$379.50, the monthly SNAP allotment is \$78.

During the pendency of the hearing, the Appellant reported medical costs and other expenses that had not been previously reported to the Respondent. Although the Respondent made adjustments to the Appellant's SNAP allotment amount based on the Appellant's report, the expenses had not been reported to the Respondent previously and, therefore, could not be considered at the time of the January 2019 SNAP allotment determination.

Staff Assignment Changes:

During the hearing, the Appellant made multiple and conflicting requests to have the Respondent worker, Ms. Koch, and supervisor, Mr. Griffin, removed from his case and then requested to have them exclusively assigned to his case. Staffing assignments are at the discretion of the agency and beyond the scope of review authority granted to the Board of Review by the Secretary. As such, this Hearing Officer is unable to grant relief regarding the Appellant's request to have specific staff members assigned or excluded from his SNAP benefit case.

CONCLUSIONS OF LAW

- 1) Regulations specify that aid, care, and assistance entitlements as authorized by the federal Social Security Act are precluded from review by the Board of Review.
- 2) As the Board of Review lacks the authority to review the Appellant's SSA entitlements, relief regarding the Appellant's SSA income withholdings to be reimbursed cannot be granted.
- 3) The Board of Review lacks the authority to grant relief regarding the Appellant's request to have specific staff members assigned or excluded from his SNAP benefits case.
- 4) Effective December 2018, the Appellant's RSDI income increased from \$762 monthly to \$784 monthly.
- 5) After application of deductions, the Appellant's net monthly income was \$379.50.
- 6) Pursuant to policy, for a one-person AG with a net monthly income of \$379.50, the monthly SNAP allotment is \$78.
- 7) The Respondent correctly determined the amount of the Appellant's monthly SNAP allotment, effective March 1, 2019.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's determination of the Appellant's monthly SNAP benefit allotment.

ENTERED this 25th day of June 2019.

Tara B. Thompson
State Hearing Officer