



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

Bill J. Crouch
Cabinet Secretary

Board of Review
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Jolynn Marra
Interim Inspector
General

September 1, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 20-BOR-1995

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 (DHHR). 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, MLS
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: Stephanie Smith, [REDACTED] County DHHR

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

██████████,

Appellant,

v.

ACTION NO.: 20-BOR-1995

**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 August 27, 2020 an appeal filed August 12, 2020.

The matter before the Hearing Officer arises from the February 27, 2020 determination by the Respondent to terminate the appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Stephanie Smith, ██████████ County DHHR. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 DHHR 6 or 12 Month Contact Reporting Form, dated December 23, 2019
- D-2 DHHR Verification Checklist, mailing date of February 3, 2020
- D-3 DHHR Notices, dated January 17 and February 27, 2020
- D-4 Correspondence from the Appellant to the Respondent, dated February 20, 2020
- D-5 Correspondence from the Appellant to the Respondent, scanned on February 11, 2020
- D-6 West Virginia Income Maintenance Manual (WVIMM) § 4.4.4.G
- D-7 WVIMM §§ 4.4.3 through 4.4.3.B and §§ 4.4.3.C through 4.4.4.C.1
- D-8 WVIMM Chapter 4, Income Chart

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 Supplemental Nutrition Assistance Program benefits for a three-person Assistance Group (AG) (Exhibit D-1).
- 2) On December 23, 2019, the Respondent issued a 6 or 12-month contact form (interim contact form) requesting that the Appellant complete the form and mail it to the Respondent by January 2, 2020 (Exhibit D-1).
- 3) On January 17, 2020, the Appellants SNAP case was closed due to the interim contact form not being submitted to the Respondent by January 2, 2020 (Exhibit D-3).
- 4) On January 23, 2020, the Appellant returned the completed interim contact form to the Respondent (Exhibit D-1).
- 5) The AG's only source of income was \$1,195 in veterans' educational benefits paid directly to the Appellant every two weeks for living and education expenses (Exhibits D-1, D-4, and D-5).
- 6) On February 11, 2020, the Appellant submitted a Defense Finance and Accounting Service Military Leave and Earnings Statement verifying the amount of veterans' educational benefits (Exhibit D-5).
- 7) The Respondent included the Appellant's veterans' educational benefits as unearned income when determining the AG's SNAP eligibility.
- 8) On February 27, 2020, the Respondent issued a notice advising the Appellant that his SNAP benefits would be terminated after January 31, 2020, due to his \$2,240 gross monthly unearned income exceeding the SNAP eligibility guidelines (Exhibit D-3).

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) § 1.2.4 Client Responsibility 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 § 1.4.1.D Failure to Complete the Interim Contact Form provides in part:

When a SNAP AG is closed for failure to complete the interim contact form, a new application is not required when the form is returned by the last day of the 13th month for households certified for 24 months. For households certified for 12 months, the form must be returned by the last day of the seventh month. Benefits are prorated from the date the interim contract form is returned.

WVIMM § 1.4.8 Due Date of Additional Information provides in part:

Additional information requested from the applicant is due 10 calendar days from the date of the DFA-6 or verification checklist.

WVIMM §§ 4.3.1 (27)(d.) and 4.3.1 (98)(c) Income Chart provides in part:

For SNAP purposes, Veterans' Educational Benefits are not considered as income.

WVIMM § 4.4.4.G Educational Income provides in part:

All student financial assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, and veterans' educational benefits are entirely excluded. Unless used for living expenses, income from stipends is excluded.

Code of Federal Regulations § 273.9(c)(3)(i) Income Exclusions provides in part:

Educational assistance, including veterans' educational benefits, shall be excluded from household income.

DISCUSSION

The Appellant was required to submit an interim contact form by January 2, 2020, but did not submit the completed form until January 23, 2020. The policy provides that it is the Appellant's responsibility to provide complete and accurate information about his circumstances so that the Respondent is able to make a correct SNAP eligibility determination. Because the Appellant did not submit his interim contact form by the due date, the Respondent was required by policy to

close the Appellant's SNAP case on January 17, 2020. However, the Appellant submitted the late interim contact form on January 23, 2020, and the Respondent did not require the Appellant to complete a new application to determine his SNAP eligibility based on the information provided on the interim contact form. On February 27, 2020, the Respondent determined that the Appellant was ineligible for SNAP benefits, effective February 1, 2020, due to the AG's income exceeding SNAP eligibility guidelines. The Appellant requested a fair hearing to contest the Respondent's inclusion of his monthly veterans' educational benefit when making a determination about the Appellant's financial eligibility to participate in SNAP.

Throughout the hearing, the Appellant contended that the Respondent caused a significant delay in the processing of his case and raised issue with his inability to make contact with the Respondent staff. The Board of Review does not have the authority to reprimand individual Respondent workers and can only determine whether the Respondent followed regulations and policy when deciding Appellant's SNAP eligibility.

The Respondent had to prove by a preponderance of evidence that the Appellant's veterans' educational income was correctly included as unearned income when deciding the Appellant's SNAP eligibility. The Respondent testified that when determining the Appellant's eligibility, Respondent workers were unsure whether to consider the Appellant's educational income or whether deductions to the educational income should have been applied. The Respondent argued that the Appellant's educational income was considered as unearned income because the policy specified that educational income used for living expenses must be included as income. The Respondent testified that the portion of educational income used for education expenses are deducted when determining what portion of the educational income is applied as income for living expenses. However, the February 27, 2020 notice reflected use of the full amount of educational income as unearned income and did not reflect any deductions for education expenses.

The policy does not define veterans' educational benefits, however, the Respondent did not contest that the Appellant's Air Force issued educational income was a veteran educational benefit. The Respondent based the Appellant's SNAP eligibility denial on WVIMM § 4.4.4.G, which is a general policy regarding educational income. The policy does not specify that veterans' educational benefits used for living expenses must be included as unearned income. Instead, the policy provides a general statement that "income from stipends" is excluded unless used for living expenses. The Respondent's interpretation of WVIMM § 4.4.4.G—that veterans' educational benefits should only be excluded as income when not used for living expenses—is inconsistent with federal regulations and WVIMM sources of income charts.

The Code of Federal Regulations § 273.9(c)(3)(i) provides that when considering SNAP eligibility, veterans' educational benefits shall be excluded from household income. Additionally, WVIMM §§ 4.3.1 (27)(d) and 4.3.1 (98)(c) stipulate that veterans' educational benefits are not included for SNAP purposes. There are no provisions in the regulations or the income charts that specifically require veterans' educational benefits used for living expenses to be included as income for determining SNAP eligibility.

During the hearing, testimony was provided by the Appellant regarding use of his veterans' educational benefits for living expenses, however, because the Respondent incorrectly considered

the Appellant's veterans' educational benefits as unearned income, evidence regarding the use of his educational benefits for living expenses was given little weight in the decision of this Hearing Officer.

CONCLUSIONS OF LAW

- 1) The Appellant's monthly veterans' educational benefits must be excluded from income when determining SNAP eligibility.
- 2) The preponderance of evidence verified that the Appellant incorrectly included the Appellant's veterans' educational benefits as unearned income when making the February 27, 2020 decision regarding the Appellant's SNAP eligibility.
- 3) The Respondent's February 27, 2020 denial of the Appellant's SNAP eligibility based on the AG's income exceeding SNAP eligibility guidelines was incorrect.
- 4) The Appellant's retroactive SNAP benefits must be prorated from January 23, 2020 —the date the Appellant submitted the interim contact form to the Respondent.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's February 27, 2020 decision to deny the Appellant's SNAP eligibility. It is hereby **ORDERED** that the Appellant's SNAP benefits be reinstated retroactively to the date the Appellant submitted the interim contact form. The matter is **REMANDED** for calculation of monthly SNAP benefit allotment amount.

ENTERED this 1st day of September 2020.

Tara B. Thompson, MLS
State Hearing Officer