



**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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Charleston, West Virginia 25313
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**Jolynn Marra
Interim Inspector General**

February 19, 2021

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:21-BOR-1014

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 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,

Danielle C. Jarrett
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29
cc: Tera Pendleton, Department Representative

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

██████████,

Appellant,

v.

Action Number: 21-BOR-1014

**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' (WVDHHR) Common Chapters Manual. This fair hearing was convened on January 27, 2021, on an appeal filed December 30, 2020.

The matter before the Hearing Officer arises from the December 30, 2020 determination by the Respondent to terminate the Appellant's Supplemental Nutritional Assistance Program (SNAP) benefits due to excessive income.

At the hearing, the Respondent appeared by Tera Pendleton, Economic Service Worker, WVDHHR. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 eRAPIDS computer system screenshot printout of Case Comments, dated November 13, 2020 through January 7, 2021
- D-2 West Virginia People's Access To Help (WVPATH) Application for SNAP, dated November 16, 2020
- D-3 eRAPIDS computer system screenshot printout of Household Members, dated March 6, 2017
- D-4 Notice of Verification Checklist, dated December 2, 2020
- D-5 ██████████ 2019 Schedule K-1, dated December 28, 2020
- D-6 eRAPIDS computer system screenshot printouts of Unearned Income for ██████████, ██████████, ██████████, and ██████████, dated December 1, 2020; and eRAPIDS computer system screenshot printouts of Self-Employment Income for ██████████ and ██████████, dated January 20, 2021

- D-7 Notice of Decision, dated December 30, 2020
D-8 Email Correspondence, dated January 10, 2021; and Email Correspondence, dated January 11, 2021
D-9 eRAPIDS computer system screenshot printout of SNAP Budget, dated December 29, 2020

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) On November 16, 2020, the Appellant applied for Supplemental Nutrition Assistance Program (SNAP) benefits for a nine (9) person Assistance Group (AG). (Exhibit D-2)
- 2) On December 1, 2020, the Respondent processed the Appellant's application for SNAP benefits and pended the application for verification of household income. (Exhibit D-1)
- 3) On December 2, 2020, the Respondent issued a notice of verification checklist to the Appellant requesting proof of [REDACTED] self-employment monthly hours and gross earned income. The notice further advised verification was due on or before December 11, 2020. (Exhibit D-4)
- 4) The Appellant submitted the requested income verification for [REDACTED] by the December 11, 2020 due date. (Exhibit D-1)
- 5) The Appellant is a 50% shareholder in a business partnership with [REDACTED] and receives 50% of the earnings.
- 6) Based on the 2019 income tax return information submitted by the Appellant on December 21, 2020, the household monthly gross countable income after allowable deductions equals \$5,223.84, with \$2,611.92 attributed to [REDACTED] and \$2,611.92 attributed to the Appellant. (Exhibits D-5 and D-6)
- 7) On December 29, 2020, the Respondent updated the Appellant's gross monthly income and attributed \$1,843.46 to [REDACTED] and \$1,843.46 to the Appellant. (Exhibit D-1)
- 8) The Appellant received unearned income in the amount of \$2,370 in December 2020 (\$790 foster care income for [REDACTED] (+) \$790 foster care income for [REDACTED] (+) \$790 foster care income for [REDACTED]). (Exhibits D-1 and D-6)

- 9) On December 30, 2020, the Respondent issued a notice of decision to the Appellant advising that her household income is too much to receive SNAP benefits, effective December 1, 2020. (Exhibit D-7)
- 10) For December 2020, the Appellant's total monthly household income was \$7,067.
- 11) The Appellant is entitled to an allowable deduction from gross earned income of 20% (\$1,044.77) and a standard deduction of \$243 for an AG of 9, beginning December 1, 2020. (Exhibit D-9)
- 12) The Appellant's Net Adjusted Income, after applicable deductions, is \$6,306.07 per month.

APPLICABLE POLICY

WV IMM § 1.2.3.A explains it is the worker's responsibility to obtain all pertinent, necessary information through verification, when appropriate.

WV IMM § 1.2.5 explains at the intake interview the worker is responsible for providing the applicant with a list of verification needed to determine eligibility, using form DFA-6 or the verification checklist. He must also be told the penalty for failure to provide the verifications and what he must do if he finds he cannot obtain it by the deadline.

WV IMM § 1.4.8 reads additional information requested from the applicant is due ten (10) calendar days from the date of the DFA-6 or verification checklist.

WV IMM § 3.4.1.B Who Must Be Included provides in part:

Individuals who fit in at least one of the following categories are ineligible. When all members of the AG meet any of the criteria listed below, the entire case is ineligible. In addition, when all otherwise eligible children meet any of the criteria listed below, except receipt of foster care, adoption assistance, or Supplemental Security Income (SSI) benefits for a dependent child is age 18 or over, the AG is ineligible.

- Individuals who are recipients of federal, state, or local foster care maintenance or an adoption assistance payment.

WV IMM § 4.3.1 explains that foster care payments are unearned income. The AG has the choice of including the foster child or not. If the foster child is included, the income is unearned. If the foster child is not included, income is excluded.

WV IMM § 4.4.1 Budgeting Method provides in part:

Eligibility is determined and benefits are issued on a monthly basis; therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. The following information applies to earned and unearned income.

For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the Assistance Group (AG). Income is projected; past income is used only when it reflects the income the client reasonably expects to receive during the certification period. There is one exception, which requires use of actual income instead of conversion or proration.

When the amount of an anticipated income source is determined by use of an income tax return, it is not necessary to change the method by which that income source is anticipated at each redetermination prior to the next tax return, unless the anticipated income from that source for the upcoming certification period is expected to change.

WV IMM § 4.4.1.A Methods for Reasonably Anticipating Income provides in part:

There are two methods for reasonably anticipating the income the client expects to receive. One method uses past income and the other method uses future income. Both methods may be used for the same AG for the same certification period. The method used depends on the circumstances of each source of income.

Use past income only when both of the following conditions exist for a source of income:

- Income from the source is expected to continue into the certification period; and
- The amount of income from the same source is expected to be more or less the same. For these purposes, the same source of earned income means income from the same employer, not just the continued receipt of earned income.

WV IMM § 4.4.2 reads conversion of income to a monthly amount is accomplished by multiplying an actual or average amount as follows: weekly amount x 4.3; bi-weekly amount (every two weeks) x 2.15; and semi-monthly amount (twice/monthly) x 2.

WV IMM § 4.4.2.B.1 explains that 20% of gross countable earned income, is a disregard. This disregard is applied to the combined earnings of all members of the AG and to those persons whose income is counted or deemed. It is intended to cover those expenses incidental to employment or training, such as transportation, meals away from home, special clothing, and payroll deductions.

WV IMM § 4.4.2.B.2 reads that a standard deduction is applied to the total non-excluded income counted for the AG, after application of the Earned Income Disregard. The amount of the Standard

Deduction is found in Appendix B. Chapter 4, Appendix B lists the standard deductions applicable to the Appellant for an Assistance Group of nine (9) is \$243.

WV IMM § 4.4.2.B.7 explains that 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. Exception: The cap on the shelter/utility deduction does not apply when the SNAP AG includes an individual who is elderly or disabled, as defined in Section 13.15.

WV IMM § 4.4.2.C.1 explains that SUAs are fixed deductions that are adjusted yearly to allow for fluctuations in utility expenses. These deductions are the Heating/Cooling Standards (HCS), the Non-Heating/Cooling Standard (NHCS), and the One Utility Standard (OUS). The current SUA amounts are found in Appendix B (HCS = \$428, NHCS = \$281, and OUS = \$76). AGs that are not obligated to pay any utility expense are ineligible for the SUA. Eligibility for the SUA must be evaluated at certification, redetermination, and when the AG reports a change in utilities that may affect its eligibility for a deduction. To be eligible for the HCS, the AG must be obligated to pay a heating and cooling expense that is billed on a regular basis.

WV IMM § 4.4.3 reads that when at least one AG member is elderly, which is at least age 60, or disabled, eligibility is determined by comparing the countable income to the maximum net monthly income found in Appendix A. There is no gross income test. To determine the SNAP allotment, find the countable income and the number in the AG in Appendix C, Basis of Issuance.

The following steps are determined countable income for cases meeting the eligibility test above.

- Step 1: Combine monthly gross countable earnings and monthly gross profit from self-employment
- Step 2: Deduct 20% of Step 1
- Step 3: Add the gross countable unearned income
- Step 4: Subtract the Standard Deduction (\$243)
- Step 5: Subtract allowable Dependent Care Expenses
- Step 6: Subtract the amount of legally obligated child support actually paid
- Step 7: Subtract the Homeless Shelter Deduction found in Appendix B
- Step 8: Subtract allowable medical expenses in excess of \$35
- Step 9: Calculate 50% of the remaining income and compare it to the actual monthly, shelter/SUA amount (\$428)
- Step 10: If the shelter/SUA costs are equal to or less than the amount found in step 9, no further computation is needed, the amount from step 8 is countable income.
- Step 11: Compare the countable income to the maximum net income in Appendix A for the AG size nine (9).

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

WV IMM § 4.4.4.D Income from Self-Employment provides in part:

When an AG member or a disqualified individual(s) receives income from self-employment, the instructions below must be used to arrive at the gross profit which is used to calculate countable income.

Contract income that is not intended to cover a 12-month period and is not paid on an hourly or piecework basis is prorated over the period it is intended to cover.

WV IMM § 4.4.4.D.1 Determining Gross Income provides in part:

Gross income includes the net proceeds from the sale of capital goods or equipment. The method used to determine monthly gross income from self-employment varies with the nature of the enterprise. It is necessary to determine which of the following types of self-employment applies to the client's situation.

Many persons derive income from short-term seasonal self-employment. This seasonal enterprise may be the major source of income for the year, or only for the period of time the person is actually engaged in this enterprise, with other sources of income being available during the remainder of the year.

Because the income is seasonal, it must be averaged over the period of time it is intended to cover, even if it is the major source of income for the year. However, if the averaged amount of past income does not accurately reflect the anticipated monthly circumstances because of a substantial increase or decrease in business, the income is calculated based on anticipated earnings.

WV IMM § 4.4.4.D.2 reads gross profit from self-employment is the income remaining after deducting any identifiable costs of doing business from the gross income. Deductions provides in part:

Examples of allowable deductions include, but are not limited to:

- Employee labor costs, including wages paid to an AG member and any salary the client pays himself. When paid to an AG member, the income must be considered according to the provisions in Section 4.3
- Stock and supplies
- Raw material
- Seed
- Fertilizers
- Repair and maintenance of machinery and/or property
- Cost of rental space used for conducting the business
- Payments on the principal and interest of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods
- Insurance premiums and taxes paid on the business and income-producing property
- The utilities, principal, interest, and taxes for the client's residence which is used

in part to produce income. This is applicable only if the expenses on the portion of the home used in the self-employment enterprise can be identified separately. The total deduction given for shelter and/or expense of doing business must not exceed the actual expense.

- Advertising costs
- Utilities
- Office expenses (i.e., stamps, stationery, etc.)
- Legal costs
- Net Loss from self-employment farming.

Do not deduct the following:

- Federal, State, or local income taxes
- Money set aside for retirement
- Travel from home to a fixed place of business and return
- Depreciation
- Amounts claimed as a net loss, except loss from farming self-employment.

WV IMM § 6.2.2.A explains provider income information is available the first working day after the second Friday of each month. Information received includes adoption, foster care, day care, and demand payments for the previous month. This information is considered verified upon receipt for SNAP and is not subject to independent verification for all programs.

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. Monthly SNAP allotments are determined by an individual's countable income, after all allowable deductions have been applied. The Appellant contested the Respondent's determination that she is ineligible for SNAP benefits, effective December 1, 2020.

On November 16, 2020, the Appellant applied for SNAP benefits for a nine (9) person AG. On December 1, 2020, the Respondent processed the Appellant's SNAP application and pended the Appellant's SNAP benefits for verification of household income.

On December 2, 2020, the Respondent issued a notice of verification checklist to the Appellant requesting proof of [REDACTED] self-employment monthly hours and gross earned income. The notice further advised verification was due on or before December 11, 2020. The Appellant submitted the requested income verification for [REDACTED] by the December 11, 2020 due date.

Based on income tax return information submitted by the Appellant on December 21, 2020, the Appellant is a 50% shareholder in a business partnership with [REDACTED] and receives 50%

of the earnings. The Appellant testified that she and [REDACTED] have owned their roofing business with no employees since June 2019 and that business is better in the summer than the winter. She further explained that she has not worked since March 16, 2020, due to her children's online learning schedule and her enrollment in college. However, since the tax forms submitted show that the Appellant is a 50% shareholder in a business partnership with [REDACTED], 50% of the earnings must be attributed to the Appellant and 50% attributed to [REDACTED]. For December 2020, their household monthly gross countable income, after allowable deductions, was \$5,223.84, with \$2,611.92 attributed to [REDACTED] and \$2,611.92 attributed to the Appellant.

Although the Appellant stated that business is better in the summer than the winter, she did not argue that there was a substantial increase or decrease in business. Policy stipulates that income must be averaged over the period of time it is intended to cover, even if it is the major source of income for the year. However, if the averaged amount of past income does not accurately reflect the anticipated monthly circumstances because of a substantial increase or decrease in business, the income is calculated based on anticipated earnings.

The Respondent testified that the Appellant received unearned income in the amount of \$3,160 for November 2020 in foster care payments. The Respondent further testified the Appellant received \$790 in November 2020 for a child removed from her home. The \$790 in November 2020 for foster care payment that the Appellant received for a child removed from her home is irrelevant. The Appellant's issue of appeal is for December 2020 SNAP benefits. Policy stipulates that foster care payments are unearned income for the month received by the Appellant. The AG has the choice of including the foster child or not. Because the Appellant included the foster children in the SNAP AG, the income is unearned. Evidence submitted by the Respondent shows the Appellant received unearned income in the amount of \$2,370 for December 2020 in foster care payments. The Appellant did not contest her unearned income for December 2020.

For SNAP eligibility purposes, certain deductions are permitted when determining gross income from self-employment. Policy explains deductions for depreciation are not permitted and must be included. In calculating [REDACTED] and the Appellant's self-employment income the deductions for depreciation listed are \$18,563. When added to the listed net income of \$44,243, the countable annual self-employment income for SNAP purposes is \$62,806 (\$5,223.84 per month).

The Appellant's December 2020 SNAP allotment calculations are as follows: \$5,223.84 total earned income minus an earned income deduction in the amount of 20% (\$1,044.77) equals \$4,179.07. The Appellant receives \$2,370 in unearned income, which equals a total monthly income of \$6,549.07. The Appellant is entitled to a standard deduction in the amount of \$243. The Appellant's SNAP Net Adjusted Income, after applicable deductions is \$6,306.07. Because the Appellant is a 50% shareholder in the business, half of the unearned income is attributed to her and half to her partner [REDACTED]. For correct calculations, the income should be properly attributed for accurate eligibility determinations in the Respondent's computer eligibility system.

On December 30, 2020, the Respondent issued a notice of decision to the Appellant advising her that her household income is too much to receive SNAP benefits, effective December 1, 2020. The Respondent's notice was inaccurate in that the calculations for earned income incorrectly included depreciation as an applicable deduction for SNAP purposes. However, even with the corrected

income amounts, the Appellant's total household income, with the applicable deductions, is in excess of the SNAP income limits.

The Appellant reported during the hearing that [REDACTED] is now unable to work due to heart surgery. If the Appellant's household income has changed, the Appellant may reapply for SNAP benefits.

CONCLUSIONS OF LAW

- 1) Monthly SNAP allotments are determined by the countable income of the AG, after all allowable deductions have been applied.
- 2) For December 2020, the Appellant's AG had a total gross income of \$7,067.
- 3) The Appellant's AG is entitled to receive earned income and standard deductions, resulting in a net adjusted income of \$6,306.07, which is in excess of policy limits for SNAP assistance.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's determination of SNAP benefits due to excessive income. It is hereby **ORDERED** that if the Appellant reapplies for SNAP benefits within 10 days of hearing decision, benefits be considered back to the date of the hearing.

ENTERED this ____ day of February 2021.

Danielle C. Jarrett
State Hearing Officer