



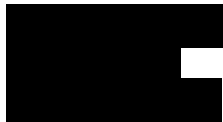
**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
P.O. Box 1736
Romney, WV 26757
304-822-6900**

**Jolynn Marra
Inspector General**

May 26, 2022



RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1629

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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: Tammy Conley, WVDHHR

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

[REDACTED],

Appellant,

v.

Action Number: 22-BOR-1629

**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 [REDACTED]. 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 May 26, 2022, on appeal filed May 9, 2022.

The matter before the Hearing Officer arises from the March 9, 2022 decision by the Respondent to terminate the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Tammy Conley, Economic Service Worker. Appearing as a witness for the Respondent was Jeffery Adkins, Economic Service Supervisor. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Case Comments dated March 8, 2022
- D-2 Earnings Statement dated February 7, 2022 and February 22, 2022
- D-3 Notice of Denial dated March 9, 2022
- D-4 West Virginia Income Maintenance Manual Income Chart
- D-5 West Virginia Income Maintenance Manual § 4.4.1.B
- D-6 West Virginia Income Maintenance Manual § 4.4.4.J
- D-7 Computer Printout of Assistance Group Composition Details
- D-8 SNAP application dated May 4, 2022

- D-9 Case Comments dated May 5, 2022
D-10 Additional Case Comments dated May 5, 2022
D-11 SNAP Emergency Allotment COVID-19 Memorandum dated March 30, 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) The Appellant was a recipient of Supplemental Nutrition Assistance Program (SNAP) for a household of three (3) individuals.
- 2) The Appellant completed a Periodic Report Form (PRC) on March 8, 2022, as a redetermination of eligibility for SNAP benefits. (Exhibit D-1)
- 3) The Appellant is employed with [REDACTED] at an hourly rate of \$16.80. (Exhibit D-2)
- 4) The Appellant reported gross earned income of \$2,143.67 for February 7, 2022, and \$2229.99 for February 22, 2022. (Exhibit D-2)
- 5) The Appellant's March 22, 2022 earning statement documents a \$500.00 referral bonus which the Respondent disregarded as irregular income. (Exhibit D-2)
- 6) The Appellant reported overtime income on both earnings statements. (Exhibit D-2)
- 7) The Respondent calculated the Appellant's earned income to be \$1809.19 for February 7, 2022, and \$1730.01 for February 22, 2022.
- 8) The Respondent determined the Appellant's biweekly gross monthly earnings to be \$3804.62.
- 9) The SNAP gross income limit is \$2379.00.
- 10) On March 9, 2022, the Respondent issued a Notice of Denial, which informed the Appellant that her household income exceeded the maximum income limits, and her SNAP benefits would terminate effective March 31, 2022.
- 11) The Appellant is paid semi-monthly.

- 12) The Appellant completed a new application for SNAP benefits on May 4, 2022. (Exhibit D-8)
- 13) The Appellant was reapproved for monthly SNAP benefits in the amount of \$147.00 for May 2022 and \$164.00 for June 2022.

APPLICABLE POLICY

West Virginia Income Maintenance Manual 4.4.1

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.

West Virginia Income Maintenance Manual 4.4.1.A

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.

Use future income when either of the following conditions exist for a source of income:

- Income from a new source is expected to be received during the certification period. For these purposes, a new source of earned income means income from a different employer; or

The rate of pay or the number of hours worked for an old source is expected to change during the certification period. Income that normally fluctuates does not require use of future income. Future income is used for old sources only when the hourly, weekly, monthly, etc. rate of pay changes or the number of hours worked during a pay period increases or decreases permanently.

West Virginia Income Maintenance Manual 4.4.1.B

The Worker must consider information about the client's income sources before deciding which income to use. The Worker must follow the steps below for each old income source.

Step 1: Determine the amount of income received by all persons in the Income Group (IG) in the 30 calendar days prior to the application/redetermination date, or interview date when the interview is completed on a different day than when the application is received. The appropriate time period is determined by counting back 30 days beginning with the calendar day prior to the date of application/redetermination. However, if the interview is completed on a different day than when the date the application/redetermination is received, the 30-day look-back period could begin the day before the interview date. The income from this 30-day period is the minimum amount of income that must be considered. When, in the Worker's judgment, future income may be more reasonably anticipated by considering the income from a longer period of time, the Worker considers income for the time period he determines to be reasonable. Whether the Worker considers income from the prior 30 days, or from a longer period of time, all of the income received from that source during that time period must be considered. All pay periods during the appropriate time period must be considered and must be consecutive. If the client provided sufficient income verification on the date the application/redetermination is received, then additional verification is not required at interview. The year-to-date amounts on check stubs may only be used when the client has verification of all payment amounts whether used or not but is missing one.

Step 2: Determine if the income from the previous 30 days is reasonably expected to continue into the new certification period. If it is not expected to continue, the income from this source is no longer considered for use in the new certification period. If it is expected to continue, determine if the amount is reasonably expected to be more or less the same. If so, the income source is used for the new certification period and treated according to Section 4.4.1.D below. If it is not expected to continue at more or less the same amount, the income source is used for the new certification period and treated according to Section 4.4.1.C below.

Step 3: Record the results of Step 2, including the amount of income, why the source is or is not being considered for the new certification period, the client's statement about continuation of the income from this source, the time period used, and, if more than the previous 30 days, the reason additional income was considered. Once the Worker has determined all of the old sources of income to consider and the time period for which they are considered, he must then determine if any source should be considered for future income

Any income in the certification period that is received too infrequently, or irregularly, to be reasonably anticipated, but not in excess of \$30 per quarter, is excluded. However, should an AG's receipt of irregular income continue over time, it must be anticipated, and a determination of a countable amount be made according to the budgeting method outlined in Section 4.4.1.

DISCUSSION

Policy governs that past income may be utilized when determining SNAP eligibility when the source of income is expected to continue into the certification period. Additionally, income which is received on an infrequent basis and cannot be reasonably anticipated is excluded from the determination of countable income. On March 9, 2022, the Respondent denied the Appellant's eligibility for SNAP benefits based on its determination that the household's monthly gross income exceeded the maximum income limits set forth by policy. The Respondent had to prove by a preponderance of the evidence that the Appellant's monthly gross income, including overtime pay, exceeded the maximum monthly limits.

On March 8, 2022, the Appellant completed a PRC form to determine her household's continued eligibility for SNAP benefits. As part of the PRC, the Appellant provided earnings statements, (Exhibit D-2), which included overtime income, for February 7, 2022, and February 22, 2022, from her employment with [REDACTED]. Tammy Conley, Economic Service Worker, testified that the Respondent included the Appellant's overtime income in its determination of Appellant's eligibility. Ms. Conley indicated that the overtime income was reasonably anticipated because it was documented on both February earnings statements. The Respondent determined the Appellant's gross monthly income to be \$3804.62 by averaging the Appellant's February 7, 2022, earnings statement of \$1809.19 (\$1623.72 regular pay and \$185.47 overtime pay) and the February 22, 2022, earnings statement of \$1729.99 (\$1355.26 regular pay and \$374.73 overtime pay) for an amount of \$1769.59 and multiplying it by a biweekly rate of 2.15. Ms. Conley testified that the Appellant's gross monthly income exceeded the SNAP income limit of \$2379.00 (Exhibit D-4) for a three-person household.

The Appellant testified that she received an increase in her hourly pay from \$14.80 to \$16.80 from [REDACTED] and the overtime in the February earnings statement was a direct result of the salary increase. The Appellant contended that the overtime pay could not be anticipated on a regular basis and should not be included in the determination of her SNAP eligibility. The Appellant testified that she is not paid biweekly, but on a semi-monthly basis on the 7th and 22nd of each month. The Appellant acknowledged that she is now eligible for SNAP benefits, but the denial of April 2022 benefits created a hardship for her household.

The Appellant's assertion that the overtime pay included in her February earnings statement from an administered salary increase is unfounded. Both earnings statements (Exhibit D-2) clearly

indicate the Appellant's hourly rate of pay \$16.80 and an overtime rate of pay of \$25.20. It is reasonable to assume that since the overtime pay was included on both earnings statements, the income will continue through the next recertification period of SNAP benefits. The Appellant's contention that she receives her employment income on a semimonthly basis is supported by submitted evidence. The Appellant's monthly gross income for April 2022 should have been determined as \$3539.18 (an average of \$1809.19 for February 7, 2022, and \$1729.99 for February 22, 2022, for \$1769.59 multiplied by 2 (semimonthly)). The Appellant's new gross monthly income amount of \$3539.18 continues to exceed the maximum SNAP monthly gross income amount of \$2379.00; therefore, the Respondent was correct in its decision to terminate the Appellant's SNAP benefits.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, income which is reasonably expected to continue into an applicant's next recertification period must be utilized to determine SNAP eligibility.
- 2) The Appellant's overtime income is reasonably expected to continue into the next recertification period.
- 3) The Respondent incorrectly calculated the Appellant's SNAP eligibility by utilizing biweekly income amounts.
- 4) The Appellant's semimonthly income amount exceed the maximum monthly gross income amount for a three-person household.
- 5) The Respondent correctly terminated the Appellant's SNAP benefits.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to terminate the Appellant's Supplemental Nutrition Assistance Program benefit.

ENTERED this _____ day of May 2022.

Eric L. Phillips
State Hearing Officer