



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

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Cabinet Secretary

Board of Review
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Sheila Lee
Interim Inspector General

November 22, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-2216

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 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, MLS
State Hearing Officer
State Board of Review

Enclosure: Recourse
Form IG-BR-29

CC: Melanie Kelly, [REDACTED] DHHR

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

██████████,

Appellant,

v.

ACTION NO.: 22-BOR-2216

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on October 25 and November 9, 2022, on an appeal filed with the Board of Review on October 3, 2022.

The matter before the Hearing Officer arises from the Respondent's September 20, 2022 decision to deny a member of the Appellant's Assistance Group (AG) eligibility for Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Melanie Kelly, ██████████ DHHR. The Appellant appeared and represented himself. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 DHHR Notice, dated September 20, 2022
- D-2 ██████████ Pay Stubs for periods July 24 through August 6, 2022 and August 7 through August 20, 2022
- D-3 West Virginia Income Maintenance Manual (WVIMM) Excerpts;

Appellant's Exhibits:

- A-1 Letter from the Appellant, received November 3, 2022;
██████████ Pay Stubs for periods August 7 through August 20, 2022 and August 21 through September 3, 2022

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 SNAP benefits for a three-person Assistance Group (AG) that included the Appellant's daughter, [REDACTED] (hereafter, [REDACTED]) (Exhibit D-1).
- 2) [REDACTED] turned eighteen-years-old on July 28, 2022.
- 3) On September 20, 2022, the Respondent issued a notice advising that [REDACTED] was ineligible for SNAP benefits, effective October 1, 2022, because she is an ineligible student (Exhibit D-1).
- 4) On August 31, 2022, the Appellant submitted a SNAP review form.
- 5) On September 9, 2022, the Respondent conducted the SNAP interview.
- 6) The Respondent requested [REDACTED] to submit all pay stubs for August 2022.
- 7) The 30-day lookback period was July 31 through August 30, 2022 or August 9 through September 8, 2022.
- 8) To determine [REDACTED] work hours, the Respondent relied upon paystubs for hours worked July 24 through August 6, 2022 and August 7 through August 20, 2022 (Exhibit D-2).
- 9) The pay stubs reflect hours worked per pay period (Exhibits D-2 and A-1).
- 10) Between August 7 and August 20, 2022, [REDACTED] worked 45.95 hours (Exhibit D-2).
- 11) Between August 21 and September 2, 2022, [REDACTED] worked 61.07 hours (Exhibit A-1).
- 12) [REDACTED] is a first-year college student.
- 13) On August 17, 2022, [REDACTED] began attending [REDACTED].

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) § 3.2.1.A.4 provides in pertinent part:

Children under age 22, living with a parent must be in the same Assistance Group (AG) as that parent.

WVIMM § 4.3.1.q provides in pertinent part:

Employment wages are not counted as income if the client is under 18 years old and resides with a parent as a member of the same AG. **NOTE:** Income is not counted until the month following in which the child turns 18.

WVIMM § 3.2.1.E provides in pertinent part:

A student is an individual who is enrolled at least half time in a recognized school. A student enrolled at an institute of higher education is ineligible to participate in SNAP unless the individual qualifies for an exemption.

WVIMM §§ 3.2.1.E.2 and 3.2.1.E.3 provide in pertinent parts:

A student meets an exemption if the student is employed at least 20 hours per week or 80 hours a month and is paid for the employment. The 30-day period should be the same as the minimum lookback period for SNAP income [emphasis added]. The student must actually work at least 20 hours a week or 80 hours a month, regardless of the amount of wages.

A student is considered to be enrolled the day she is scheduled to begin classes at an institution of higher education. Enrollment is defined as continuing during normal periods of class attendance, vacation or recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal term.

WVIMM § 4.4.1.B provides in pertinent part:

The Worker must consider information about the client's income sources ... 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 considered income for the time period he determined 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.

Determination of Payments Example 3: Application date is October 8. Interview date is October 20. Paid weekly on Fridays. Pays in last 30 days (prior to application) are: • October 1 • September 24 • September 17 • September 10 **OR** Pays in last 30 days (prior to interview) are: • October 15 • October 8 • October 1 • September 24

DISCUSSION

The Respondent determined that [REDACTED] was ineligible for SNAP benefits and removed her from the Appellant's AG. The Appellant argued that [REDACTED] met an exemption because she works 80 hours per month as required by policy.

The Respondent bears the burden of proof. The Respondent had to demonstrate by a preponderance of the evidence that [REDACTED] did not meet an exemption because she worked less than 20 hours per week or 80 hours per month during the 30-day lookback period.

To determine [REDACTED] work hours, the Respondent relied upon paystubs for periods July 24 through August 6, 2022 and August 7 through August 20, 2022. The Respondent's witness testified that the Respondent uses a calculator to determine the 30 day period and that September 2022 pays submitted by the Appellant were beyond the 30-day lookback period. The Respondent's representative testified that August work hours reflected on the submitted paystubs must be used to determine eligibility because only August work hours were requested and eligible to be considered for the thirty day look-back period. The Respondent's representative testified that the 30-day lookback from the interview date was "all of August's pays." The Appellant argued that the additional submitted pays should be considered because they reflected hours worked during the 30-day lookback period.

The Respondent testified that the Appellant's review was submitted August 31, 2022 and the eligibility interview was conducted on September 9, 2022. For determining student hours worked, the policy stipulates that the 30-day lookback period must be the same as used to determine SNAP income. Because the eligibility interview was conducted on a different date than the date the review was submitted, the 30-day lookback period was July 31 through August 30, 2022 or August 9 through September 8, 2022. The policy provides that when income may be more reasonably anticipated by considering income from a longer period of time, the worker may consider income for the time period she determines to be reasonable.

The evidence reflected that a portion of the employment hours considered by the Respondent were worked when the Appellant's daughter was a juvenile. Consistent with the policy requirement to consider the 30-day lookback period the same as SNAP income, the policy prohibits the inclusion of employment consideration for AG members under age eighteen for SNAP purposes. Pursuant

to the policy, [REDACTED] employment verification could not be considered until the month after she turned 18. Because [REDACTED] was a juvenile during a portion of the work period reflected on the August 11, 2022 pay stub, the Respondent should not have relied upon the August 11, 2022 pay stub. The Respondent's use of income verification for a pay period before the correct 30-day lookback period and the Respondent's exclusion of income verification for pay periods within the 30-day lookback period was incorrect.

The Respondent has the discretion to consider the additional hours verification submitted by the Appellant in Exhibit A-1 and to request additional verification if the information submitted did not demonstrate the hours [REDACTED] could reasonably expect to work during the certification period. The paystubs submitted do not break down the hours worked each week of the pay period or the hours worked each month. The reliable evidence reflected in Exhibit D-2 and Exhibit A-1 do not provide a full 30-day lookback for either 30-day lookback period between July 31 through August 30, 2022 or August 9 through September 8, 2022. The Respondent must issue a new verification checklist to obtain the verification needed to calculate [REDACTED] hours worked during the correct 30-day lookback period.

During the hearing, there was additional dispute about the date of [REDACTED] student status. The Respondent's representative testified that student status begins once the student is enrolled in the program, not when the student begins classes. The Respondent's assertion is contrary to the policy, which stipulates that a student is considered to be enrolled the day she is scheduled to begin classes at an institution of higher education.

CONCLUSIONS OF LAW

- 1) A student enrolled at an institute of higher education is ineligible to participate in SNAP unless the individual qualifies for an exemption.
- 2) A student meets an exemption if the student is employed at least 20 hours per week or 80 hours a month and is paid for the employment.
- 3) The Respondent must consider information about the client's income sources 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.
- 4) The Respondent used ineligible employment verification to determine [REDACTED] hours worked.
- 5) The preponderance of evidence failed to establish that [REDACTED] did not meet an exemption because she worked less than 20 hours per week or 80 hours per month during the 30-day lookback period
- 6) The Respondent incorrectly denied the Appellant eligibility for a SNAP student ineligibility exemption.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant SNAP eligibility for [REDACTED]. The matter is **REMANDED** for issuance of a new verification request and subsequent consideration of hours [REDACTED] worked during the correct 30-day lookback period.

ENTERED this 22nd day of November 2022.

Tara B. Thompson, MLS
State Hearing Officer