



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Jeffrey H. Coben, MD
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

March 9, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1152

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Leslie Riddle, DHHR

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

██████████,

Appellant,

v.

Action Number: 23-BOR-1152

**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' Common Chapters Manual. This fair hearing was convened on February 23, 2023, on an appeal filed February 1, 2023

The matter before the Hearing Officer arises from the January 30, 2023 decision by the Respondent to reduce SNAP benefits.

At the hearing, the Respondent appeared by Leslie Riddle. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Screen print of SNAP Budget calculations for the Appellant, payment date on or before January 1, 2023
- D-2 Screen print of SNAP Budget calculations for the Appellant, current/ongoing
- D-3 Notice of decision, dated January 13, 2023
- D-4 Excerpt from the West Virginia Income Maintenance Manual, Chapter 4
- D-5 Notice of decision, dated January 30, 2023

D-6 Notice of decision, dated February 3, 2023

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 SNAP benefits.
- 2) The Respondent issued a January 13, 2023 notice (Exhibit D-3) to the Appellant, indicating her SNAP benefits would be reduced to \$30 monthly from \$191 monthly.
- 3) This notice (Exhibit D-3) advised the reason for the reduction was, "Your income has increased."
- 4) The Respondent issued a January 30, 2023 notice (Exhibit D-5) to the Appellant, indicating her SNAP benefits would be reduced to \$23 monthly from \$30 monthly.
- 5) This notice (Exhibit D-5) provided the bases for the decision as "Due to a State and Federal Policy Change, your SNAP benefits are decreasing," and "Your income has increased."
- 6) The Respondent verified Social Security income for the Appellant in the amount of \$1302 monthly, verified through a data exchange between the Respondent and the Social Security Administration.
- 7) The Appellant's SNAP benefits of \$23 monthly is based on the Social Security income amount of \$1302 monthly, as shown in the SNAP budget calculation sheet (Exhibit D-2) and the January 30, 2023 notice (Exhibit D-5).
- 8) The Appellant's sole dispute is of policy (Exhibit D-4) requiring Social Security income to be counted.

APPLICABLE POLICY

The Code of Federal Regulations, 7 CFR 273.9(b)(2) reads, in pertinent part (emphasis added):

Unearned income shall include, but not be limited to:

(i) Assistance payments from Federal or federally aided public assistance programs, such as **supplemental security income (SSI)** or Temporary Assistance for Needy Families (TANF); general assistance (GA) programs (as defined in § 271.2); or other assistance programs based on need. Such assistance is considered to be unearned income even if provided in the form of a vendor payment (provided to a third party on behalf of the household), unless the vendor payment is specifically exempt from consideration as countable income under the provisions of **paragraph (c)(1)** of this section. Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered unearned income.

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation including any amounts deducted to repay claims for intentional program violations as provided in § 272.12; **old-age, survivors, or social security benefits**; strike benefits; foster care payments for children or adults who are considered members of the household; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week.

Chapter 4 of the West Virginia Income Maintenance Manual provides a chart of income sources at §4.3.1, and, at §4.3.1.73 notes that Retirement, Survivors, and Disability Insurance (RSDI) is countable as SNAP unearned income, and provides the instruction, "Count the amount of the client's entitlement. This includes any amount deducted for Medicare, if applicable."

(§4.3.1.82 identifies this under the more commonly known term 'Social Security Payments', notes it is countable as SNAP unearned income, and directs the reader to §4.3.1.73)

DISCUSSION

The Appellant has appealed the Respondent's decision to reduce her SNAP benefits due to income. The Respondent must show by a preponderance of the evidence that it properly reduced the Appellant's SNAP benefits on this basis.

The Appellant did not dispute deductions or disregards, or specifics of the SNAP calculation process. The Appellant's sole argument is that some of her Social Security benefits should not be counted because they are survivor's benefits. The Code of Federal Regulations and policy from the West Virginia Income Maintenance Manual clearly show that this is countable as unearned income. The Appellant's argument is incorrect.

The specific amount of income verified by the Respondent is significantly more reliable than the Appellant's testimony that she receives \$913 in monthly income, because the Appellant was excluding from this amount the portion she incorrectly believed was not countable, and because the Respondent derives its income amounts directly from the Social Security Administration via a data exchange. The Respondent's determination of \$1302 in monthly Social Security income for the Appellant is correct, and the SNAP allotment of \$23 on which it is based is correct.

CONCLUSIONS OF LAW

- 1) Because the Appellant's \$1302 monthly Social Security amount is countable as unearned income for SNAP purposes, the Respondent correctly derived the \$23 SNAP allotment based on this income amount.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's determination of reduced SNAP benefits based on countable unearned income.

ENTERED this ____ day of March 2023.

Todd Thornton
State Hearing Officer