



**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 15, 2023



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: Recourse to Hearing Decision
Form IG-BR-29

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

██████████,

Appellant,

v.

Action Number: 23-BOR-1230

**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 March 8, 2023, on an appeal filed February 10, 2023.

The matter before the Hearing Officer arises from the January 31, 2023 decision by the Respondent to deny the Appellant's application for Supplemental Nutrition Assistance Program (SNAP) benefits.

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

Department's Exhibits:

- D-1 Periodic Report Form dated January 25, 2023
- D-2 Family Court Order in the matter of ██████████
██████████
- D-3 West Virginia Income Maintenance Manual § 3.2.1.A.4
- D-4 West Virginia Income Maintenance Manual § 2.5.1
- D-5 Income Summary
- D-6 West Virginia Income Maintenance Manual Chapter 4 Appendix A
- D-7 Notice of Decision dated January 31, 2023

Appellant's Exhibits:

A-1 Hearing Summary

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, along with her cohabitor, [REDACTED], had an assistance group of 5 individuals for SNAP benefits.
- 2) On January 25, 2023, the Appellant attempted to add [REDACTED] minor children, [REDACTED] to the household's SNAP benefits through a Periodic Report Form. (Exhibit D-1)
- 3) [REDACTED] minor children currently receive SNAP benefits in an assistance group with their biological mother.
- 4) The Respondent did not add the minor children to the Appellant's assistance group because they were already receiving SNAP assistance in another assistance group.
- 5) On January 31, 2023, the Respondent issued notice to the Appellant informing her that her eligibility for SNAP benefits was denied because her income exceeded the income limits for the program and that the minor children, [REDACTED], were "already receiving this [SNAP] assistance." (Exhibit D-7)
- 6) [REDACTED] is considered the primary custodial parent of minor children, [REDACTED]. (Exhibit D-2)
- 7) [REDACTED] reside with their biological mother on Wednesday and every other weekend. (Exhibit D-2)
- 8) The Appellant's total monthly gross household income was determined to be \$6112.57.
- 9) The SNAP gross income limit for 5 individuals is \$3518 per month.
- 10) The SNAP gross income limit for 7 individuals is \$4541 per month.

APPLICABLE POLICY

West Virginia Income Maintenance Manual § 2.5.1 documents in pertinent part:

No person may receive SNAP benefits in more than one assistance group for the same month.

West Virginia Income Maintenance Manual § 3.2.1.A.4 documents in pertinent part:

Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent.

There is no required maximum/minimum amount of time the child must spend with a parent for the child to be included in the SNAP AG. If no one is receiving any SNAP benefits for the child, it is assumed that the living arrangements are not questionable, and the child is added to the SNAP AG that wishes to add him. If the child is already listed in another SNAP AG or the other parent wishes to add the child to his SNAP AG, the parents must agree as to where the child “lives” and, ultimately, to which SNAP AG he is added. Where the child receives the majority of his meals, or the percentage of custody, must not be the determining factor for which parent receives SNAP for the child.

Code of Federal Regulations 7 CFR 273.1b documents in pertinent part:

Special household requirements -

(1) ***Required household combinations.*** The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

(i) Spouses;

(ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and

(iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child must be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult.

DISCUSSION

According to governing policy, no person may receive SNAP benefits in more than one assistance group for the same month. An October 2022 [REDACTED] Family Court order determined the Appellant's cohabitor, [REDACTED], to be the primary custodial parent of his children [REDACTED]. In January 2023, the Appellant attempted to add her cohabitor's biological children to her SNAP benefit assistance group through an eligibility redetermination. The Respondent subsequently denied the Appellant's request because the children in question were receiving SNAP benefits in an assistance group with their biological mother.

The Respondent must prove by a preponderance of the evidence that the children in question could not receive simultaneous SNAP benefits.

While the October 2022, Family Court order determined the Appellant's cohabitor as the primary custodial parent of children, [REDACTED] the court granted custody to the children's biological mother on Wednesday evenings and every other weekend. The Appellant cited that the court order documents that the children resided with their biological mother for a total of 87 days in 2021 and that the biological mother "refused the children returning to her residence." (Exhibit D-2) The Appellant purports that the children's biological mother abandoned them and cannot provide them 50% of their meals when they do not reside at her residence. The Appellant contends that the Respondent has never contacted the children's biological mother to determine if they properly reside in her residence.

Policy requires that children under the age of 22 must be included in the same assistance group as their parent. However, there is no required maximum or minimum amount of time in which a child must spend with a parent to be included in a SNAP assistance group. In situations in which a child is already listed in another SNAP assistance group or the other parent wishes to add the child to their own assistance group, the parents must agree as to where the child "lives" and, ultimately, to which SNAP assistance group the child is to be added. Percentage of custody or where the child receives the majority of their meals must not be the determining factor for which parent receives SNAP for a child.

The Board of Review cannot pass judgement on the Respondent's policy or grant exceptions to the policy. The Hearing Officer can only determine whether the denial of the Appellant's SNAP assistance complied with the policy. While the children's biological father was determined to be the primary custodial parent, the children were currently receiving benefits in their biological mother's assistance group at the time of the Appellant's application. The court order notes that the mother is responsible for the children every Wednesday and every other weekend. As policy documents, percentage of custody or where the child receives a majority of their meals *cannot* [emphasis added] be a determining factor for which parent receives SNAP for a child. It is reasonable to assume that when the children were added to the biological mother's assistance group, the living arrangements of the children were not questionable resulting in the approval of biological mother's benefits. However, in its current state, a dispute exists between the biological parents as to which parent shall receive SNAP benefits for the child. Policy is clear that percentage of custody or where the children receives the majority of their meals cannot be the determining factor for which parent receives benefits for the child. In absence of an agreement between the biological parents as to whom shall receive benefits for the children, the children cannot be added to the Appellant's assistance group.

Additionally, the Appellant disputed the income utilized in the determination of SNAP benefits citing that unearned income, specifically child support, was incorrectly attributed to the calculation. After

a review, the household's monthly gross earned income exceeded the income limits for the program; therefore, the Respondent was correct in its determination that the household's income exceeded the program guidelines.

CONCLUSIONS OF LAW

- 1) Individuals may not receive simultaneous SNAP benefits in multiple assistance groups for the same month.
- 2) There is no required maximum/minimum amount of time the child must spend with a parent for the child to be included in the SNAP assistance group. Percentage of custody is not a determining factor for which parent receives SNAP benefits for a child.
- 3) Living arrangements of a child are not questionable, if no assistance group is previously receiving SNAP benefits for a child.
- 4) When a child is the subject of a custody dispute or previously listed in another SNAP assistance group, it must be agreed upon as to where the child lives and to which SNAP assistance group they will be added.
- 5) In the absence of an agreement between biological parents as to where the children live and which SNAP assistance group they will receive benefits, the children may not receive simultaneous SNAP benefits in multiple assistance groups.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's decision to deny the Appellant's application for Supplemental Nutrition Assistance Program benefits.

ENTERED this _____ day of March 2023.

**Eric L. Phillips
State Hearing Officer**

