



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 468
Hamlin, WV 25523
304-824-5811

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 4, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 16, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny your SNAP and Low Income Energy Assistance (LIEAP) applications.

In arriving at a decision, the State Hearings 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.

Eligibility for the SNAP and LIEAP Programs is based on current policy and regulations. Some of these regulations state that for SNAP benefits an individual cannot be a member of more than one SNAP AG in any month. 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. In the instance of shared custody, when the child is legally considered to reside with each parent equal amounts of time (50/50), the parents must decide where the child "lives". (WV Income Maintenance Manual Section 9.1.A.1) For LIEAP, the AG consists of any individual or group of individuals who are living together as one economic unit or who are sharing expenses and for whom residential home heating is customarily purchased in common. (WV Income Maintenance Manual Section 26.2.A.2)

The information submitted at your hearing reveals that the Department incorrectly determined your son lives with you fifty percent of the time, and incorrectly prevented you from including both your children and your husband's children as household members for consideration on your LIEAP application.

It is the decision of the State Hearings Officer to **reverse** the action of the Department to deny your SNAP application and **reverse** the action of the Department to deny your LIEAP application.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Alice Kayrouz, Kanawha DHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR-897 SNAP

09-BOR-1296 LIEAP

West Virginia Department of Health and Human Resources,

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on July 16, 2009 for ----- . This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on June 2, 2009 on a timely appeal, filed verbally on January 8, 2009.

II. PROGRAM PURPOSES:

Supplemental Nutrition Assistance Program (SNAP)

The purpose of the Supplemental Nutrition Assistance Program (SNAP) is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households.". This is accomplished through the issuance of benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

LOW INCOME ENERGY ASSISTANCE PROGRAM

The goal of the Low Income Energy Assistance Program (**LIEAP**) is to provide financial assistance to eligible households that are affected by rising costs of home heating which are excessive in relation to household income. It is not the purpose of this program to meet the entire cost of home heating during the winter season. Instead, the program is designed to partially offset the continuing rise in costs of home heating.

III. PARTICIPANTS:

-----, Claimant
-----, Claimant's husband

Alice Kayrouz, Department Representative
-----, Supervisor, witness

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Agency was correct in its action to deny the Claimant's application for SNAP benefits and LIEAP.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Chapter 8.5, 9.1.A, 26.2.A.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary dated June 2, 2009
- D-2 Notification letter dated January 9, 2009
- D-3 Hearing Notice dated April 28, 2009
- D-4 Modification Order filed October 30, 2007
- D-5 WV Income Maintenance Manual Sections 8.5 and 9.1
- D-6 FAX dated June 3, 2009
- D-7 Rapids Screens Case Activity Audit Trail dated June 1, 2008 through 5-09
- D-8 Hearing Summary dated July 16, 2009 and November 3, 2008 Notification letter
- D-9 Income Verification for ----- dated September 8, 2008 and October 7, 2008
- D-10 Letter from [REDACTED] dated October 17, 2008
- D-11 Notice/Letter History Detail – Rapids Screens dated July 16, 2009

Claimant's Exhibits:

- C-1 Copy of page 7 of Combined Application Form dated December 8, 2008
- C-2 Copy of Medical Card for May 2009
- C-3 Copy of Medical Card for December 2008
- C-4 Order Adopting Parenting Agreement from Family Court [REDACTED] County filed May 21, 2008
- C-5 Copy of Pay Stubs dated November 24, 2008 and December 8, 2008 for -----
- C-6 Copy of Pay Stubs dated December 22, 2008 and January 7, 2009 for -----
- C-7 FAX from ----- dated received June 15, 2009

VII. FINDINGS OF FACT:

- 1) The evidence shows the Claimant and her husband applied for SNAP benefits and Medicaid on October 31, 2008 at the Department of Health and Human Resources' Office in [REDACTED] County, West Virginia. The Claimant and her husband applied for Low Income Energy Assistance on December 8, 2008 at the same office.
- 2) The Claimant shares joint custody (D-4) of her son, -----, with his father effective October 30, 2007. The custody arrangement allows for the Claimant to have the child in her home one hundred eighty three (183) nights per year, with the other parent having the child in his home one hundred eight two (182) nights per year. Although the Family Court's Modification Order (D-4) indicates each parent shall have the child equally, the accompanying Worksheet B: EXTENDED SHARED PARENTING document (D-4) provides the Claimant shall have the child one (1) night more per year than the other parent.
- 3) The Claimant also has another child who is in her sole custody. The Claimant's husband shares joint custody (C-4) of his two children, -----and -----, with their mother effective May 21, 2008. Their custody arrangement calls for the children to alternate weeks between parents, changing on Fridays at 7:00 p.m., and all holidays are alternated.
- 4) The parties have agreed to stipulate to all eligibility aspects of the case as correct except for the issue of assistance group composition for both applications. The Claimant contends both her children should have been included in the October 31, 2008 SNAP application, and that both her children and her husband's children should have been included in the LIEAP application dated December 8, 2008.
- 5) At the time of application for SNAP, the Claimant was receiving Medicaid for her son in her case; however, he was included in his father's case for SNAP benefits. For the SNAP application, the Claimant contended the household included herself, her husband, the son of which she has full custody, and the son of which she has shared custody, for a total assistance group of four (4) individuals.
- 6) The Department denied the SNAP benefits application on November 3, 2008 and sent the Claimant a notification letter that included the following pertinent information:

ACTION: Your 10/27/08 application for SNAP has been DENIED

REASON: Income is more than the gross income limit for you to receive benefits.

The following individuals are ineligible:

----- – This individual is already receiving this assistance.

Your Gross Income.....2536.32

SNAP Gross Income Limit.....1907.00

The Department contends that the Claimant's son was not included because he was already receiving SNAP in his father's case. Therefore, the household was considered a three (3) person household for this SNAP application, which rendered the countable income excessive.

- 7) The Department denied the Claimant's LIEAP application dated December 8, 2008 (D-11) and sent her a denial notice which included the following pertinent information:

Date: 01/09/09

Dear -----:

In the summary below, "Y" means you are eligible; "N" means you are not eligible or you did not apply for the assistance; and "S" means you are eligible because you met a Medicaid spenddown.

THIS SUMMARY IS FOR THEM ONTH OF 12/2008 ONLY

-----N

----- N

-----N

----- N

ACTION: Your application dated 12/08/08 for Home Heating Assistance under the Low Income Energy Assistance Program has been DENIED.

REASON: Income is more than the gross income limit for you to receive benefits.

Your Total Countable Income.....2512

LIEAP Allowable Income.....1907

Testimony from the Department's witness supported that she told the Claimant on the date of her LIEAP application that she could not include her husband's children on the application because there was another case in another county in which they were included. The witness stated she did not check the other case to determine if the children had been included in a LIEAP application there. The Department computed the assistance group for the LIEAP application based on a three (3) person household. None of the children involved in the presumed 50 percent (50/50) shared custody arrangement were included. It was not disclosed whether ----- received LIEAP in another assistance group prior to the application.

- 8) West Virginia Income Maintenance Manual, Chapter 8.5.A states in part that no person may receive Food Stamp benefits in more than one AG for the same month.
- 9) West Virginia Income Maintenance Manual, Chapter 9.1.A.1 states in pertinent part:

A. THE ASSISTANCE GROUP (AG)

1. Who Must Be Included

An individual cannot be a member of more than one SNAP AG in any month.

- Children Under Age 22, Living With a Parent

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.

In the instance of shared custody, when the child is legally considered to reside with each parent equal amounts of time (50/50), the parents must decide where the child “lives”. If no one is receiving any benefits from the Department for the child, it is assumed that the living arrangements are not questionable and the child is added to the AG that wishes to add him. If the child is already listed in another AG or the other parent wishes to add the child to his AG, the parents must agree as to where the child “lives” and, ultimately, to which AG he is added. Where the child receives the majority of his meals is not relevant.

10) West Virginia Income Maintenance Manual, Chapter 26.2 states in pertinent part:

26.2 ELIGIBILITY REQUIREMENTS

A. REGULAR LIEAP

2. Assistance Group

The Assistance Group (AG) consists of any individual or group of individuals who are living together as one economic unit or who are sharing expenses and for whom residential home heating is customarily purchased in common or for whom home heating is included in a rent or mortgage payment as a specified amount.

It is the responsibility of the applicant to list all individuals who are living in the home, regardless of whether or not they are family members or whether or not they share the cost of home heating. For the purpose of LIEAP eligibility, all household members are considered one AG.

When the AG includes a person(s) who has already received a LIEAP payment, he is not included in the AG and his income is not counted in determining eligibility.

- 11) West Virginia Income Maintenance Manual, Chapter 26, APPENDIX A states in pertinent part:

**LIEAP BENEFIT INCOME CHART
FY 2009 INCOME LEVELS**

Gross Monthly Income 130% FPL		Number in Benefit Group												
		1	2	3	4	5	6	7	8	9	10	11	12	13
From	To													
\$0	\$932	\$200	\$205	\$210	\$215	\$220	\$225	\$230	\$235	\$240	\$245	\$250	\$255	\$260
\$933	\$1,127	\$195	\$200	\$205	\$210	\$215	\$220	\$225	\$230	\$235	\$240	\$245	\$250	\$255
\$1,128	\$1,322		\$195	\$200	\$205	\$210	\$215	\$220	\$225	\$230	\$235	\$240	\$245	\$250
\$1,323	\$1,517		\$190	\$195	\$200	\$205	\$210	\$215	\$220	\$225	\$230	\$235	\$240	\$245
\$1,518	\$1,712			\$190	\$195	\$200	\$205	\$210	\$215	\$220	\$225	\$230	\$235	\$240
\$1,713	\$1,907			\$185	\$190	\$195	\$200	\$205	\$210	\$215	\$220	\$225	\$230	\$235
\$1,908	\$2,102				\$185	\$190	\$195	\$200	\$205	\$210	\$215	\$220	\$225	\$230
\$2,103	\$2,297				\$180	\$185	\$190	\$195	\$200	\$205	\$210	\$215	\$220	\$225
\$2,298	\$2,492					\$180	\$185	\$190	\$195	\$200	\$205	\$210	\$215	\$220
\$2,493	\$2,687					\$175	\$180	\$185	\$190	\$195	\$200	\$205	\$210	\$215
\$2,688	\$2,882						\$175	\$180	\$185	\$190	\$195	\$200	\$205	\$210

The chart above shows the income limits for the Low Income Energy Assistance Program for the timeframe of this application. The chart clearly shows that, given the Claimant's countable income of two thousand five hundred twelve dollars (\$2512.00) during the month of application, the Claimant meets the income eligibility requirements for the LIEAP program if her assistance group numbers five (5) or more individuals.

VIII. CONCLUSIONS OF LAW

- 1) The policy and regulations that govern the SNAP Food Stamp Program direct that an individual cannot be a member of more than one SNAP AG in any month, and that natural and adopted children and stepchildren under age twenty two (22) must be included in the same AG as their parents. In the instance of shared custody when each parent has the child 50 percent of the time, the parents must decide as to where the child "lives".
- 2) The evidence reveals that the child, of whom the Claimant shares custody, lives with her one night more per year than the other parent as per the Family Court Order (D-4). Therefore, this is not considered a fifty (50) percent shared custody situation, and the policy governing those type living arrangements does not apply.
- 3) The child, being the Claimant's biological child, must be included with her assistance group for the SNAP program. The Department was incorrect to exclude him from the SNAP assistance group based on the shared (50/50) policy.
- 4) Policy governing the Low Income Energy Assistance Program (LIEAP) calls for the AG to consist of any individual or group of individuals who are living together as one economic unit

or who are sharing expenses and for whom residential home hearing is customarily purchased in common. When the AG includes a person(s) who has already received a LIEAP payment, he is not included in the AG and his income is not counted in determining eligibility.

- 5) The Department failed to determine whether the children presumed as being in a shared (50/50) custody arrangement had already been included in a LIEAP payment. This is the only reason the children could have been excluded per policy.
- 6) The Department incorrectly denied the LIEAP application based on an assistance group composition of three (3) individuals. They totally excluded one of the Claimant's children, and both of her husband's children, from the assistance group. These three (3) excluded children were eligible to be included as long as they had not already been included in another LIEAP payment. This was never explored by the Department.

IX. DECISION:

The Department's action to deny the Claimant's SNAP application and Low Income Energy Assistance (LIEAP) application is hereby **reversed**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 5th Day of August, 2009

**Cheryl Henson
State Hearing Officer**