



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D.
Cabinet Secretary

January 19, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 21, 2010. Your hearing request was based on the Department of Health and Human Resources' action to reduce your SNAP and WV WORKS cash assistance effective September 2010, and then terminate your WV WORKS cash assistance effective October 2010, due to counting certain stipend income you received from an Army ROTC scholarship for school year 2010-2011.

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.

Eligibility and benefit levels for SNAP and WV WORKS are based on current policy and regulations. Some of these regulations state that for SNAP, all student financial assistance is excluded in its entirety. (WV Income Maintenance Manual Section 10.4) However, Federal Regulations state that no portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered excludable. (Federal Regulations 7 CFR §273.9(c)(3)(i)] For WV WORKS, some policy states that all educational income, including loans for education, is excluded, regardless of the source. (WV Income Maintenance Manual Sections 10.24) However, Federal Regulations provide that only scholarships obtained and used under conditions that preclude their use for current living costs are excluded. [Federal Regulations 45 CFR §233.20(a)(3)(iv)(B)]

The information submitted at your hearing reveals that you are attending college and received a scholarship from the Army ROTC program for school year 2010-2011. Part of this scholarship, a stipend in the amount of five hundred dollars (\$500.00) monthly, is intended to be utilized for living expenses. Because this income is intended for use in paying for your living expenses, it is considered countable income for both the SNAP and WV WORKS cash assistance program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in reducing your SNAP and WV WORKS cash assistance effective September 2010, and then terminating your WV WORKS cash assistance beginning in October 2010.

Sincerely,

Cheryl Henson, State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review, -----, [REDACTED] DHHR

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

-----,

Claimant,

v.

**Action Number: 10-BOR-2238 WV WORKS
10-BOR-2403 SNAP**

**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 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 December 21, 2010 on a timely appeal filed September 7, 2010.

II. PROGRAM PURPOSE:

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.

The purpose of WV WORKS is to help economically dependent, at-risk families become self-supporting. It is a work-oriented, performance-based, time-limited Program that emphasizes employment and personal responsibility. The goals of WV WORKS are to achieve more efficient and effective use of public assistance funds, reduce dependency on public programs by promoting self-sufficiency, and structure assistance to emphasize employment and personal responsibility.

III. PARTICIPANTS:

-----, Claimant

-----, Claimant's witness

-----, Department representative

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to reduce the Claimant's SNAP and WV WORKS cash assistance effective September 2010 and then terminate the Claimant's WV WORKS benefits effective October 2010.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual §10.4 and 10.24
Code of Federal Regulations 7 CFR §273.9(c)(3)(i), 45 CFR §233.20(a)(3)(iv)(B)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of IG-BR-29 form
- D-2 Copy of Claimant's hearing request
- D-3 Notification letter dated September 3, 2010
- D-4 Letter from [REDACTED] dated August 23, 2010
- D-5 Email transactions between Department employees
- D-6 Income verification dated November 8, 2010
- D-7 WV Income Maintenance Manual Section 10.4.A
- D-8 Case comments from Department's computer system

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving SNAP and WV WORKS cash assistance during August 2010 when the Department took action to reduce her SNAP and WV WORKS cash assistance effective September 2010 and then terminate her WV WORKS cash assistance eligibility effective October 2010, based on its determination that certain stipend income from the Claimant's Army ROTC scholarship (D-3) was countable unearned income for those programs of assistance.
- 2) The Department representative, -----, testified that she is a Family Support Specialist in the [REDACTED] County, West Virginia Department of Health and Human Resources office. She provided that a SNAP and WV WORKS face to face review interview was completed with the

Claimant on August 25, 2010 at which time the Claimant reported and verified that she was currently receiving the Army ROTC scholarship. The Claimant submitted a letter from (D-3) the provider of the scholarship which explained exactly what the scholarship covered; in addition to covering the cost of tuition, fees and books, the scholarship also included a stipend of five hundred dollars (\$500.00) per month for twelve months.

- 3) ----- stated that because she was unable to determine whether the stipend income from the scholarship was to be considered for eligibility purposes for SNAP and WV WORKS cash assistance, the Department requested clarification from its Policy Unit by email communication (D-4). She added that the Policy Unit responded and instructed that the stipend income of five hundred dollars (\$500.00) monthly was to be considered as unearned income for the programs of assistance, and that when this income was considered, the Claimant was rendered ineligible for WV WORKS, and her SNAP benefits were reduced.
- 4) The Claimant testified that she attends college and the stipend is used to pay for her living expenses while attending college. She stated that she has a small child and no other means of support while she is attending school.
- 5) The Claimant's witness, -----, is a Professor of Military Science at [REDACTED]. He testified that he was the individual responsible for awarding the Claimant's Army ROTC scholarship, and that the stipend issued to her was part of that scholarship. He added that the stipend was issued and intended for the Claimant to utilize in paying her living expenses while a student, thus allowing her to concentrate on her studies.
- 6) The Claimant does not dispute that if the stipend amount is considered countable income, her SNAP would be reduced to the level determined by the Department, and she would not be eligible for WV WORKS cash assistance. She contends, however, that the stipend amount of the scholarship, awarded for living expenses, should not be considered unearned income for the purposes of SNAP and WV WORKS cash assistance eligibility.
- 7) The West Virginia Income Maintenance Manual §10.4.D.7 regarding SNAP income consideration states in pertinent part:

SPECIAL SITUATIONS

7. Educational Income

All student financial assistance is excluded in its entirety.

Excluded educational assistance includes, but is not limited to:

- Federal Pell Grants
- Federal Supplemental Educational Opportunity Grants (FSEOG)
- Guaranteed Student Loans,
- Leveraging Educational Assistance Partnership (LEAP) and Special Leveraging Education Assistance Partnership (SLEAP) Programs
- Federal Perkins Loans
- Federal Stafford Loans
- Federal and non-federal college Work-Study

- Robert C. Byrd Honors Scholarship
- WV Promise Scholarships
- WV Higher Education Grant
- Veteran's Educational Benefits
- Montgomery GI Bill

- 8) Federal Regulations in 7 CFR §273.9 (c) regarding SNAP income consideration states in pertinent part:

Income shall not include the following:

(3) (i) Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, veterans' educational benefits and the like.

(ii) To be excluded, educational assistance referred to in paragraph (c) (3) (i) must be:

(B) Used or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:

- (1) Tuition
- (2) Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved.
- (3) Books.
- (4) Supplies.
- (5) Transportation
- (6) Miscellaneous personal expenses, other than normal living expenses, of the student incidental to attending a school, institution or program.
- (7) Dependent care.
- (8) Origination fees and insurance premiums on educational loans
- (9) Normal living expenses which are room and board are not excludable.

- 9) The West Virginia Income Maintenance Manual §10.24.D.7 regarding WV WORKS income consideration states in pertinent part:

SPECIAL SITUATIONS

7. Educational Income

All educational income, including loans for education, is excluded, regardless of the source. Educational expenses may include, but are not limited to, tuition, books, lab fees, living expenses, and other expenses necessary to attend an educational program.

- 10) Federal Regulations in 45 CFR §233.20(a)(3)(iv)(B) regarding WV WORKS income consideration states in pertinent part:

(iv) ...in determining the availability of income and resources, the following will not be included as income:

(B) Grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs.

VIII. CONCLUSIONS OF LAW:

- 1) WV Income Maintenance Policy provides that for SNAP, all student financial assistance is excluded in its entirety; and for WV WORKS cash assistance, all educational income, including loans for education, is excluded, regardless of the source. This policy also stipulates that educational expenses may also include living expenses and other expenses necessary to attend an educational program. However, policy in the Code of Federal Regulations provides otherwise. Federal Regulations provide that when educational income, such as scholarships, is earmarked or used for living expenses, the income from that portion of the scholarship is not excluded from consideration as income for the SNAP and WV WORKS cash assistance programs.
- 2) The evidence is clear in that the Claimant received a ROTC scholarship which also included, as a part of that scholarship, stipend monies in the amount of five hundred dollars (\$500.00) monthly earmarked for the Claimant's personal use in paying her living expenses. The evidence is also clear in that the Claimant utilized those monies in order to pay for her living expenses while attending college. The only area of dispute involves whether the stipend amount should be considered unearned income when determining SNAP and WV WORKS cash assistance eligibility.
- 3) Although State policy suggests otherwise in this instance, the Code of Federal Regulations clearly outlines that when monies from scholarships are utilized for living expenses, the income is not excluded from consideration. Because State policy must conform to Federal Regulations, the policy in the Federal Regulations supersedes the State's policy. The income from the Claimant's stipend is not excludable in this instance.
- 4) The Department was correct in its decision to reduce the Claimant's SNAP and WV WORKS cash assistance effective September 2010, and then terminate the Claimant's WV WORKS cash assistance effective October 2010, based on considering this stipend income as unearned income against those benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's action to reduce and then terminate the Claimant's SNAP and WV WORKS cash assistance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of January, 2011.

**Cheryl Henson
State Hearing Officer**