STATE OF WEST VIRGINIA
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

Sherri A. Young, DO, MBA, FAAFP
Cabinet Secretary

Ann Vincent-Urling
Interim Inspector General

March 6, 2024

[redacted]

RE: [redacted] v. WV DEPARTMENT OF HUMAN SERVICES BUREAU FOR FAMILY ASSISTANCE
ACTION NO.: 24-BOR-1421

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 Human Services. These same laws and regulations are used in all cases to ensure 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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

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

cc: Leslie Gilbert, [redacted] DoHS

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WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted]

Appellant,

v. **Action Number: 24-BOR-1421**

WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES
BUREAU FOR FAMILY ASSISTANCE,

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [redacted]. This hearing was held in accordance with the provisions found in Chapter 700 of the Office of Inspector General Common Chapters Manual. This fair hearing was convened on March 5, 2024, on an appeal filed on February 12, 2024.

The matter before the Hearing Officer arises from the February 6, 2024, decision by the Respondent to reduce the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Leslie Gilbert, Economic Service Worker. The Appellant represented herself. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Hearing Summary
D-2 SNAP 6 or 12-Month Contact Form received January 3, 2024
D-3 Verification Checklist dated January 24, 2024
D-4 Paystubs dated December 15 and December 29, 2024
D-5 Notice of SNAP Reduction dated February 6, 2024
D-6 Hearing Request received February 12, 2024
D-7 West Virginia Income Maintenance Manual §4.4.1.D

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 is recipient of SNAP benefits for a one-person assistance group.

2) The Appellant submitted a SNAP interim contact form to the Respondent on January 3, 2024 (Exhibit D-2).

3) The Appellant reported that she was employed as a substitute cook and worked as needed (Exhibit D-2).

4) The Respondent sent a verification checklist to the Appellant on January 24, 2024, requesting verification of her income (Exhibit D-3).

5) The Appellant submitted paystubs dated December 15, 2024, for $694 and December 29, 2024, for $416.40 (Exhibit D-4).

6) The Respondent calculated the Appellant’s monthly income as $1,193.68 ($694 plus $416.40 equals $1110.40 divided by 2 equals $555.20 multiplied by 2.15).

7) The Respondent issued a notice to the Appellant on February 6, 2024, advising that her monthly SNAP allotment would decrease from $291 to $64 effective March 1, 2024 (Exhibit D-5).

APPLICABLE POLICY

Code of Federal Regulations Title 7 §273.10 explains household eligibility and benefit levels for SNAP:

> (c) ***Determining income —***
>
> (1) ***Anticipating income.***
>
> (i) For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If

the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by [§273.12](#).

(ii) Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

(2) ***Income only in month received.***

(i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period. Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income.

(ii) Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. However, wages held by the employer as a general practice, even if in violation of law, shall not be counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or that it will receive income from wages that were previously held by the employer as a general practice and that were, therefore, not previously counted as income by the State agency. Advances on wages shall count as income in the month received only if reasonably anticipated as defined in paragraph (c)(1) of this section.

(iii) Households receiving income on a recurring monthly or semimonthly basis shall not have their monthly income varied merely because of changes in mailing cycles or pay dates or because weekends or holidays cause additional payments to be received in a month.

(3) ***Income averaging.***

(i) Income may be averaged in accordance with methods established by the State agency to be applied Statewide for categories of households. When averaging income, the State agency shall use the household's anticipation of monthly income fluctuations over the certification period. An average must be recalculated at recertification and in response to changes in income, in accordance with §273.12(c), and the State agency shall inform the household of the amount of income used to calculate the allotment. Conversion of income received weekly or biweekly in accordance with paragraph (c)(2) of this section does not constitute averaging.

(ii) Households which, by contract or self-employment, derive their annual income in a period of time shorter than 1 year shall have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, sharecroppers, farmers, and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers. The procedures for averaging self-employed income are described in §273.11. Contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be prorated over the period the income is intended to cover.

(iii) Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

West Virginia Income Maintenance Manual Chapter 4 explains income eligibility for SNAP:

4.4.1 Budgeting Method

Eligibility is determined and benefits are issued on a monthly basis; therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. The following information applies to earned and unearned income. For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the assistance group (AG). Income is projected; past income is used only when it reflects the income the client reasonably expects to receive during the certification period. There is one exception, which requires use of actual income instead of conversion or proration.

See Section 4.4.1.E below. When the amount of an anticipated income source is determined by use of an income tax return, it is not necessary to change the method by which that income source is anticipated at each redetermination prior to the next tax return, unless the anticipated income from that source for the upcoming certification period is expected to change.

4.4.1.A Methods for Reasonably Anticipating Income

There are two methods for reasonably anticipating the income the client expects to receive. One method uses past income and the other method uses future income. Both methods may be used for the same AG for the same certification period. The method used depends on the circumstances of each source of income.

Use past income only when both of the following conditions exist for a source of income:

- Income from the source is expected to continue into the certification period; and
- The amount of income from the same source is expected to be more or less the same. For these purposes, the same source of earned income means income from the same employer, not just the continued receipt of earned income.

Use future income when either of the following conditions exist for a source of income:

- Income from a new source is expected to be received during the certification period. For these purposes, a new source of earned income means income from a different employer; or
- The rate of pay or the number of hours worked for an old source is expected to change during the certification period. Income that normally fluctuates does not require the use of future income. Future income is used for old sources only when the hourly, weekly, monthly, etc. rate of pay changes or the number of hours worked during a pay period increases or decreases permanently.

4.4.1.B Consideration of Past Income

The Worker must consider information about the client’s income sources before deciding which income to use. The Worker must follow the steps below for each old income source.

Step 1: 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 considers income for the time period he determines 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. If the client provided sufficient income verification on the date the application/redetermination is received, then additional verification is not required at interview. The year-to-date amounts on check stubs may only be used when the client has verification of all payment amounts whether used or not but is missing one.

Step 2: Determine if the income from the previous 30 days is reasonably expected to continue into the new certification period. If it is not expected to continue, the income from this source is no longer considered for use in the new certification period. If it is expected to continue, determine if the amount is reasonably expected to be more or less the same. If so, the income source is used for the new certification period and treated according to Section 4.4.1.D below. If it is not expected to continue at more or less the same amount, the income source is used for the new certification period and treated according to Section 4.4.1.C below.

Step 3: Record the results of Step 2, including the amount of income, why the source is or is not being considered for the new certification period, the client's statement about continuation of the income from this source, the time period used, and, if more than the previous 30 days, the reason additional income was considered.

Once the Worker has determined all of the old sources of income to consider and the time period for which they are considered, he must then determine if any source should be considered for future income.

4.4.1.C Consideration of Future Income

This section applies only when the client reasonably expects to receive income from a new source during the new certification period, or when the amount of income from an old source is expected to change. In that case, the Worker must consider the income that can be reasonably expected to be received.

Step 1: Determine if the IG expects to receive income from a new source, or expects a different amount from an old source, in the new certification period. If not, none of the following steps are necessary. However, the Worker must record the client's statement that he does not expect income from a new source.

Step 2: Determine the amount of income the client reasonably expects to receive from the new source, or the new amount from the old source. If the amount of income is not reasonably anticipated, the income from that source is not counted. If it is possible to reasonably anticipate a range of income, the minimum amount that is anticipated is used. The Worker will record case comments for the client's statement concerning this income and will also record why it cannot be reasonably anticipated.

Step 3: Determine the date the client reasonably expects to receive the income from the new source, or the new amount from the old source. If the date the income will be received is not reasonably anticipated, the income from that source is not counted. The Worker will record case comments for the client's statement concerning the date and will also record why it cannot be reasonably anticipated.

Step 4: When the amount and date of receipt can be anticipated, the Worker treats the income according to Section 4.4.1.D below. The Worker must record how the amount and date of receipt were projected.

4.4.1.D How to Use Past and Future Income
The purpose of finding an average amount of fluctuating income is to even out the highs and lows in the amount of income. The client is not, then, required to report fluctuating income each pay period and the Worker is not required to change income monthly. See Section 10.4.2 for SNAP reporting requirements. Sometimes the client receives higher benefits than he would if actual income were used and sometimes, he receives lower benefits. Therefore, when the Worker has averaged fluctuating income based on the best information available and the client's income does not match the monthly amount used by the Worker, there is no repayment when the client receives higher benefits and no supplemental issuance when the client receives lower benefits. Should the client report fluctuations in the amount of income, the Worker is only required to recalculate the countable income when, in his judgment, the fluctuation will significantly impact the benefit amount. All changes reported by the client must be considered, but not necessarily used. Reported changes must be recorded and the Worker must record why the reported income was or was not used.

Conversion of income to a monthly amount is accomplished by multiplying an actual or average amount as follows:

- Weekly amount x 4.3
- Biweekly amount (every two weeks) x 2.15
- Semi-monthly amount (twice/month) x 2

DISCUSSION

Policy and federal regulations stipulate that SNAP eligibility is determined on a monthly basis and it is necessary to determine a monthly amount of income to count for the eligibility period. For all cases, the Respondent must determine the amount of income that can be reasonably anticipated for the assistance group. Income received during the past thirty (30) days shall be used as an indicator of the income that is and will be available to the household during the certification period.

The Respondent reduced the Appellant's monthly SNAP allotment when previously unreported earned income for the Appellant was added to her case. The Appellant testified that she is a substitute cook for [redacted] Schools and she typically works 2 days a month. The Appellant contended that she worked more than usual in December due to covering for staff on vacation leave and her December income is not reflective of what she earns. The Appellant stated she does not receive any income during the summers.

The Respondent calculated the Appellant's income by using the paystubs she received in the 30-day period prior to the submission of the SNAP interim contact form. Although the Appellant argued that December's income was higher than what she normally receives, the earned income had not been previously reported, therefore, the Respondent had no indication of whether the verified income was consistent with what the Appellant earned. The Appellant did not provide any evidence to corroborate her claim that she works an average of 2 days each month and she could not recall how many days she worked in January or February 2024.

Whereas the Respondent acted in accordance with policy in calculating the Appellant's income based up the income she received in the 30-day period prior to the submission of the January 3, 2024, SNAP interim contact form, and no contradictory evidence was provided by the Appellant documenting a change in income, the Respondent's decision to reduce the Appellant's monthly SNAP allotment is affirmed.

CONCLUSIONS OF LAW

1) SNAP eligibility is determined on a monthly basis and income that can be reasonably anticipated for the assistance group during the certification period is used.

2) Income received during the past thirty (30) days is used as an indicator of the income that is and will be available to the household during the certification period.

3) The Respondent calculated the Appellant's monthly income using an average of the paystubs received in the 30-day period prior to the submission of the SNAP interim contact form.

4) The Appellant failed to provide evidence documenting a decrease in her earned income.

5) The Respondent correctly calculated the Appellant's earned income which resulted in a decrease in SNAP benefits.

DECISION

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

ENTERED this 6th day of March 2024.

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Kristi Logan
Certified State Hearing Officer