



June 14, 2024

[REDACTED]

RE: [REDACTED] v. WVDoHS
ACTION NOS.: 24-BOR-2173 and 24-BOR-2368

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Brittany Lane-Brock, DoHS

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

██████████,

Appellant,

v.

Action Numbers: 24-BOR-2173 & 24-BOR-2368

**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 ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Office of Inspector General Common Chapters Manual. This fair hearing was convened on June 4, 2024.

The matter before the Hearing Officer arises from the Respondent's calculation of Supplemental Nutrition Assistance Program (SNAP) benefits and termination of Medicare Premium Assistance Program benefits as outlined in notices dated May 7, 2024, and May 23, 2024.

At the hearing, the Respondent appeared by Brittany Lane-Brock, Economic Service Worker Senior, WVDoHS. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 IG-BR-29 Hearing Request Notification form
- D-2 West Virginia Income Maintenance Manual Chapter 3.2.1.C.4
- D-3 Adoption and Guardianship for Children in Kinship Foster Care Comparison Chart for West Virginia
- D-4 Case Comments from Respondent's computer system
- D-5 SNAP Budget information
- D-6 Notice of Decision dated May 7, 2024
- D-7 Notice of Decision dated May 23, 2024
- D-8 Notice of Decision dated January 20, 2023

Appellant's Exhibits:

- A-1 Packet of correspondence including: Letter to West Virginia Governor Jim Justice from Appellant; Hearing Scheduling Order dated May 15, 2024; [REDACTED] Utility Termination Notice dated May 8, 2024; Notices of Decision dated January 30, 2024, April 5, 2024, April 24, 2024, May 7, 2024, and May 23, 2024; and Fair Hearing Request Form

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 submitted a Supplemental Nutrition Assistance Program (SNAP) and Medicare Premium Assistance Program application to the Respondent on March 21, 2024 (Exhibit D-4).
- 2) The Respondent's worker completed an application interview with the Appellant on April 4, 2024 (Exhibit D-4).
- 3) After reviewing household income with the worker, the Appellant withdrew the March 21, 2024, SNAP application (Exhibit D-4).
- 4) The Appellant was reapproved for Medicare Premium Assistance Program benefits under the Specified Low Income Medicare Beneficiary (SLIMB) Program on April 4, 2024 (Exhibit D-4).
- 5) The Appellant reapplied for SNAP benefits on April 22, 2024 (Exhibit D-4).
- 6) The Appellant receives gross Social Security income of \$1,502.70 per month and monthly pension benefits of \$466.66 per month (\$5,600 per year divided over 12 months) for a total gross monthly income of \$1,969.36.
- 7) The Appellant's Social Security benefits increased because she began receiving additional Social Security income upon the death of her ex-husband.
- 8) The increase in Social Security income caused the Appellant's total countable income to exceed the SLIMB income limit.
- 9) The Respondent notified the Appellant that SLIMB benefits would close effective June 2024 (Exhibit D-6).
- 10) The Respondent had been a kindship relative care provider for her granddaughter and grandson.

- 11) The Appellant adopted her granddaughter in March 2024 and was approved to receive \$851 per month in Adoption Assistance.
- 12) The Appellant's SNAP application was approved, and SNAP benefits were calculated as \$21 per month.
- 13) The Respondent sent the Appellant a Notice of Decision on May 23, 2024, indicating that SNAP benefits would decrease from \$21 to \$13 per month based on a SNAP recoupment (Exhibit D-7).
- 14) Following the SNAP approval, the Respondent learned that the Appellant's grandson, who was previously approved for Foster Care income, had been approved to receive a Legal Guardianship Subsidy of \$942 per month effective October 1, 2023.
- 15) The Appellant contended that she has received no income for her grandchildren from Adoption Assistance or Legal Guardianship Subsidies.
- 16) The Respondent provided no documentation to verify that the Appellant has been paid Adoption Assistance or Legal Guardianship Subsidies.

APPLICABLE POLICY

Code of Federal Regulations 7 CFR 273.9 provides income eligibility standards for SNAP benefits:

Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligibility standards for SNAP. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for SNAP. Households which are categorically eligible as defined in [§ 273.2\(j\)\(2\)](#) or [273.2\(j\)\(4\)](#) do not have to meet either the gross or net income eligibility standards. The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act ([42 U.S.C. 9902\(2\)](#)).

(1) The gross income eligibility standards for SNAP shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be 130 percent of the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be 130 percent of the Federal income poverty levels for Alaska.

(iii) The income eligibility standards for Hawaii shall be 130 percent of the Federal income poverty levels for Hawaii.

(2) The net income eligibility standards for SNAP shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be the Federal income poverty levels for Alaska.

(iii) The income eligibility standard for Hawaii shall be the Federal income poverty levels for Hawaii.

(3) The income eligibility limits, as described in this paragraph, are revised each October 1 to reflect the annual adjustment to the Federal income poverty guidelines for the 48 States and the District of Columbia, for Alaska, and for Hawaii.

(i) 130 percent of the annual income poverty guidelines shall be divided by 12 to determine the monthly gross income standards, rounding the results upwards as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is multiplied by 130 percent, divided by 12, and the results rounded upward if necessary.

(ii) The annual income poverty guidelines shall be divided by 12 to determine the monthly net income eligibility standards, rounding the results upward as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

(4) The monthly gross and net income eligibility standards for all areas will be prescribed in tables posted on the FNS web site, at www.fns.usda.gov/snap

West Virginia Income Maintenance Manual Chapter 4.3.1 states that Adoption Assistance is considered as unearned income for SNAP purposes. Foster Care and Guardianship Subsidies are counted as unearned income for SNAP purposes if the Assistance Group (AG) chooses to include the child in SNAP benefits. Pensions and Social Security income are considered unearned income sources for the SNAP and SLIMB Programs.

West Virginia Income Maintenance Manual Chapter 4.4.1 states that the worker must determine the amount of income that can be reasonably anticipated for the Assistance Group.

West Virginia Income Maintenance Manual Chapter 4.4.1.A states:

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 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.

West Virginia Income Maintenance Manual Chapter 4.4.1.B states:

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.

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.

Code of Federal Regulations 7 CFR 273.2(f)(2) states:

The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level. The State agency shall establish guidelines to be followed in determining what shall be considered questionable information. These guidelines shall not prescribe verification based on race, religion, ethnic background, or national origin. These guidelines shall not target groups such as migrant farmworkers or American Indians for more intensive verification under this provision.

Code of Federal Regulations 7 CFR 273.2(f)(4) states:

Sources of verification —

(i) ***Documentary evidence.*** State agencies shall use documentary evidence as the primary source of verification for all items except residency and household size. These items may be verified either through readily available documentary evidence or through a collateral contact, without a requirement being imposed that documentary evidence must be the primary source of verification. Documentary evidence consists of a written confirmation of a household's circumstances. Examples of documentary evidence include wage stubs, rent receipts, and utility bills. Although documentary evidence shall be the primary source of verification, acceptable verification shall not be limited to any single type of document and may be obtained through the household or other source. Whenever documentary evidence

cannot be obtained or is insufficient to make a firm determination of eligibility or benefit level, the eligibility worker may require collateral contacts or home visits. For example, documentary evidence may be considered insufficient when the household presents pay stubs which do not represent an accurate picture of the household's income (such as outdated pay stubs) or identification papers that appear to be falsified.

West Virginia Income Maintenance Manual Chapter 4.12 states that to qualify for SLIMB benefits, income must be greater than 100 percent of the Federal Poverty Level and less than 120 percent of the Federal Poverty Level after allowable deductions.

West Virginia Income Maintenance Manual Chapter 3.15.1 states that only the individual or spouses eligible for SLIMB are included in the Assistance Group. When an individual has no spouse, only the individual's income is counted. The income limit for a single individual is used.

West Virginia Income Maintenance Manual Chapter 4, Appendix A, states that the income limit for a one-person SLIMB Assistance Group is \$1,506 per month.

DISCUSSION

Policy states that a worker must reasonably anticipate the amount of income an Assistance Group is expected to receive when calculating SNAP benefits. To qualify for SLIMB benefits, income must be greater than 100 percent of the Federal Poverty Level and less than 120 percent of the Federal Poverty Level after allowable deductions.

The Appellant testified that she has applied for and been denied SNAP benefits several times in the past few months. She stated that she was confused about income sources for the U.S. Treasury direct deposits in her checking account over the past several months and believed that she was receiving Adoption Assistance for her granddaughter and/or Foster Care/Legal Guardianship subsidies for her grandson. However, the Appellant testified that she spoke with someone in Charleston and learned that she has received no income for her grandson since February 2023. She was informed that she would receive a one-time demand payment of over \$14,000 in back payment for Foster Care and/or Legal Guardianship benefits, which she still has not received to date. After that payment is provided, the Appellant indicated that she would receive monthly Legal Guardianship payments for her grandson. The Appellant testified that she adopted her granddaughter in March 2024 and has received no Adoption Assistance for her since the adoption. The Appellant stated that she is currently receiving \$980 per month in Social Security income because the Social Security Administration is deducting Medicare payments from the income. It is unclear why the payments are being withheld since the Respondent's representative confirmed that the Appellant received SLIMB consistently since February 2023 prior to the recent SLIMB termination. The Appellant testified that she received a series of confusing letters from the Respondent, some of which indicated that she did not purchase and prepare meals with her grandchildren for SNAP purposes.

The Respondent's representative testified that she checked with Child Protective Services and the Respondent's Homefinding Unit and learned that the Appellant is owed a back payment for her grandson's income. She contended that the Respondent must consider income that the Appellant "is obligated" to receive, so the Adoption Assistance/Legal Guardianship payments must be counted as income for SNAP purposes. However, the Appellant can choose to have her grandson and his income included or excluded from SNAP benefits.

The Respondent's representative was informed by the Respondent's Child Protective Services and Homefinding Units that the Appellant is owed a substantial back payment in care subsidies for her grandson. Based on this disclosure, it is clear that she has not received regular payments for his care. While the Appellant may currently be approved to receive Legal Guardianship and Adoption Assistance payments, the Respondent provided no verification to demonstrate that the Appellant has actually started to receive them. Without this verification, there is no way to determine whether the payments can be reasonably anticipated. Therefore, the Respondent's calculation of SNAP benefits cannot be affirmed.

The Appellant received an increase in Social Security benefits upon the death of her ex-husband, bringing her total monthly gross income (with additional pension benefits) to \$1,969, which exceeds 120 percent of the Federal Poverty Level for a one-person SLIMB Assistance Group. Therefore, the Respondent's decision to terminate SLIMB benefits is correct.

CONCLUSIONS OF LAW

- 1) Policy states that the income limit for the SLIMB Program is \$1,506 for a one-person SLIMB Assistance Group.
- 2) The Appellant's countable income exceeds the income limit for the SLIMB Program.
- 3) Policy states that the Respondent must reasonably anticipate income the Assistance Group is expected to receive for SNAP purposes.
- 4) While the Appellant was approved to receive Adoption Assistance and a Legal Guardianship Subsidy for her grandchildren, there is no verification that she has actually started receiving these monies.
- 5) The Respondent must determine whether the Appellant is receiving Adoption Assistance payments and a Legal Guardianship subsidy and calculate the Appellant's SNAP benefits accordingly.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's action to terminate SLIMB benefits effective June 2024 based on excessive income. The issue of the Appellant's SNAP calculation is **REMANDED** to the Respondent to determine total anticipated household income and recalculate the SNAP allowance, if needed, accordingly.

ENTERED this 14th day of June 2024.

Pamela L. Hinzman
State Hearing Officer