



August 30, 2024

[REDACTED]

RE: [REDACTED] v. WV DoHS/BFA
ACTION NO.: 24-BOR-2647

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 (DoHS). 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,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

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

cc: Kara Pendleton, WV DoHS

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

████████████████████,

Appellant,

v.

Action Number: 24-BOR-2647

**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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on August 27, 2024.

The matter before the Hearing Officer arises from the Respondent's April 15, 2024 decision to reduce the amount of the Appellant's Supplemental Nutrition Assistance Program monthly benefit allotment.

At the hearing, the respondent was represented by Kara Pendleton, DoHS Constituent Services. The Appellant appeared and represented herself. Both parties were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 DoHS Case Comments
- D-2 People's Access to Help (PATH) SNAP application, dated March 25, 2024
- D-3 PATH Unearned Income screen print, beginning month March 2024
- D-4 PATH Medicare screen print, beginning month November 2023
- D-5 PATH SNAP Budget screen print, determination date April 12, 2024
- D-6 SNAP Notice, dated April 15, 2024
- D-7 Case Comments

Appellant's Exhibits:

- A-1 Appellant's Request for a Fair Hearing, dated April 22, 2024

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 categorically eligible to receive SNAP benefits (Exhibit D-5).
- 2) In November 2023, the Appellant was approved for SNAP benefits for a two-person Assistance Group (AG) and Medicare premium assistance (Exhibit D-4).
- 3) In November 2023, the Respondent made an error by approving the Appellant's eligibility for Medicare Premium Assistance and continuing to attribute the Appellant's Medicare premium costs as an income deduction when calculating the amount of the AG's monthly SNAP allotment (Exhibit D-4).
- 4) During the Appellant's March 2024 SNAP eligibility review, the Respondent corrected the Medicare premium cost income deduction error. The Respondent no longer attributed this deduction to the Appellant's income when determining her March 2024 SNAP eligibility (Exhibit D-6).
- 5) On March 25, 2024, the Appellant submitted her SNAP Interim Contact report via PATH and indicated the household's unearned income increased from \$1,469.90 to \$1,517.70 (Exhibit D-2).
- 6) In March 2024, the Appellant earned \$1,517.90 in monthly Social Security Disability Insurance (SSDI) (Exhibit D-3).
- 7) On April 12, 2024, the Respondent's worker processed the Appellant's March 25, 2024 SNAP Interim Contact form (Exhibit D-1).
- 8) On April 12, 2024, the Respondent's worker noted a change in the Appellant's income: "\$1,517.50 SS. Checked SOLQ to verify" (Exhibit D-1).
- 9) On April 12, 2024, the Respondent's worker noted, "Also 510 is now Medicare. WV pays premium" (Exhibit D-1).
- 10) On April 12, 2024, the Respondent determined the Appellant's AG was eligible for \$234 in SNAP benefits (Exhibit D-5).
- 11) When computing the April 2024 SNAP allotment amount, the Respondent applied a \$198 standard income deduction to the Appellant's \$1,517.90 gross unearned income, to calculate \$1,319.90 in adjusted income for the AG (Exhibits D-5 and D-6).

- 12) When determining the April 2024 SNAP allotment amount, the Respondent applied a \$317.45 Shelter/Utility Deduction (Exhibits D-5 and D-6).
- 13) After applying deductions, the Respondent considered the Appellant's \$1,002.45 net adjusted income when determining the April 2024 SNAP allotment amount (Exhibits D-5 and D-6).
- 14) On April 15, 2024, the Respondent issued a notice advising the Appellant her SNAP would decrease from \$314 to \$234, effective May 1, 2024, because her medical expenses were less and her income had increased (Exhibit D-6).
- 15) On April 22, 2024, the Appellant submitted a request for a fair hearing (Exhibit A-1).
- 16) The Respondent delayed processing the Appellant's request for a hearing.
- 17) On July 9, 2024, case number [REDACTED] was opened with the Respondent regarding the Appellant's owed backpay with the Medicare Buy-In Unit (Exhibits D-1 and D-7).
- 18) On July 9, 2024, the Respondent's record reflects the Appellant "was added to the buyin file on [April 12, 2024] and backdated to [November 2023]. Since she was added on [April 12, 2024] she was placed on the May buyin. She would be reimbursed for the premiums she paid within 33 to 120 days after June 1, 2024. (CMS has till October to repay her) (Exhibits D-1 and D-7).

APPLICABLE POLICY

Code of Federal Regulations 7 CFR § 273.9 provides information regarding SNAP income and deductions:

(a) *Income eligibility standards.* Participation in SNAP 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 that contain an elderly or disabled member shall meet the net income eligibility standards for SNAP. Households that 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 that are categorically eligible do not have to meet either the gross or net income eligibility standards.

- (1) The gross income eligibility standards for SNAP shall be as follows:
- (2) The net 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 38 contiguous States and the District of Columbia.
- (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, Alaska, and 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.
- ii. The annual income poverty guidelines shall be divided by 12 to determine the monthly net income eligibility standards, rounding upwards as necessary.

(d) *Income deductions.* Deductions shall be allowed for only the following household expenses:

1) *Standard deduction* –

- i. Effective October 1, 2022, in the 48 States ..., the standard deduction for household sizes one through six shall be equal to 8.31 percent of the monthly net income eligibility standard for each household size established under paragraph (a)(2) of this section rounded up to the nearest whole dollar

(6) *Shelter costs* - ...

- ii. *Excess shelter deduction.* Monthly shelter expenses exceed 50 percent of the household's income after all other deductions have been allowed. If the household does not contain an elderly or disabled member, the shelter deduction cannot exceed the maximum shelter deduction limit established for the area.
- iii. *Standard utility allowances.*
 - A. With FNS approval, State agencies may develop standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction: an individual standard for each type of utility expense; a standard utility allowance for all utilities that includes heating or cooling costs (HCSUA); and, a limited utility allowance (LUA) that includes electricity and fuel for purposes other than heating or cooling, water, sewage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. The LUA must include expenses for at least two utilities.

Code of Federal Regulations 7 CFR § 273.10 *Determining household eligibility and benefit levels* provides in the relevant sections:

(a) *Month of application* –

(1) *Determination of eligibility and benefit levels.*

- i. A household's eligibility shall be determined for the month of application by considering the household's circumstances for the entire month of application. Most households will have the eligibility determination based on circumstances for the entire calendar month in which the household filed its application ...
- 2) *Application for recertification.* Eligibility for recertification shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period. The level of benefits for recertifications shall be based on the same anticipated circumstances ...

(d) *Determining deductions.* Deductible expenses include only certain dependent care, shelter, medical and, at State agency option, child support costs.

- (7) Categorically eligible households shall be entitled to the excess medical deduction of § 273.9(d)(3) and the uncapped excess shelter expense deduction of § 273.9(d)(5) for the

period for which the SSI recipient is authorized to receive SSI benefits or the date of the SNAP application, whichever is later.

(e) *Calculating net income and benefit levels –*

(1) *Net monthly income.*

- i. To determine a household's net monthly income, the State agency shall:
 - A. Add the gross monthly earned and unearned income of all household members, minus income exclusions, to determine the household's total gross income ...
 - C. Subtract the standard deduction
 - D. If the household is entitled to an excess medical deduction, determine if total medical expenses exceed \$35. If so, subtract that portion which exceeds \$35....
 - E. Total the allowable shelter expenses to determine shelter costs, unless a deduction has been subtracted in accordance with paragraph (e)(1)(i)(G) of this section. Subtract from total shelter costs 50% of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to (e)(1)(i)(l) of this section.
 - F. Subtract the excess shelter cost up to the maximum amount allowed for the area (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly income after all other application deductions. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income has been determined.
- ii. In calculating net monthly income, the State agency shall use one of the following procedures:
 - A. Round down each income and allotment calculation that ends in 1 through 49 cents and round up each calculation that ends in 50 through 99 cents; or
 - B. Apply the rounding procedure that is currently in effect for the State's Temporary Assistance for Needy Families (TANF) program.

(2) *Eligibility and benefits –*

- i.
 - A. Households that contain an elderly or disabled member shall have their net income, as calculated in paragraph (e)(1) of this section compared to the monthly income eligibility standards defined in § 273.9(a)(2) for the appropriate household size to determine eligibility for the month.
- ii.
 - A. The household's monthly allotment shall be equal to the maximum SNAP allotment for the household's size reduced by 30% of the household's net monthly income. If 30 percent of the household's net income ends in cents, the State agency shall round in the following ways:
 - (1) The state agency shall round the 30 percent of net income up to the nearest higher dollar; or
 - (2) The State agency shall not round the 30 percent of the net income at all. Instead, after subtracting the 30 percent of net income from the appropriate Thrifty Food

Plan, the State agency shall round the allotment down to the nearest lower dollar.

(4) Thrifty Food Plan (TFP) and Maximum SNAP Allotments.

- i. ...The TFP amounts and maximum allotments in each area are adjusted annually and will be prescribed in a table posted on the FNS website at www.fns.usda.gov/fsp. [From October 1, 2023, through September 30, 2024, for a two-person household \$535 is the maximum monthly allotment. (www.fns.usda.gov/snap/recipient/eligibility)].

West Virginia Income Maintenance Manual (WVIMM) § 3.2.1.A *The Assistance Group – Who Must be Included?* Provides that the SNAP AG must include all eligible individuals who both live together and purchase food and prepare meals together, except residents of shelters for battered persons.

WVIMM § 3.2.2 *The Income Group* stipulates the income group includes all AG members and all individuals who live in the AG and would otherwise be included in the AG if not ineligible, disqualified, or excluded by law.

WVIMM § 3.2.3 *The Needs Group (NG)* provides the income limit for the number of eligible individuals in the AG is used to determine eligibility and the amount of the benefit. Normally, all AG members are included in one case number.

WVIMM Chapter 4 *Appendix A-Income Chart* provides that the maximum benefit allotment for a two-person AG is \$535

WVIMM Chapter 4 *Appendix B – Standard Deductions and Allowances for SNAP* provides that for a one to four-person AG, the standard deduction is \$193. The HCS was \$496.

WVIMM § 4.4.3.C *Determining the Amount of the Benefit* provides in part:

To determine the SNAP allotment, find the countable income and the maximum benefit allotment for the AG in Appendix A. One-person or two-person AGs who are categorically eligible automatically receive the minimum SNAP benefit. The Worker will determine the benefit amount by using the following method:

Multiply net income by 30% (round up):

EXAMPLE: \$ 554 Net monthly Income
 x .30
 \$ 166.30 = \$167

Subtract 30% of the net income as calculated from the maximum monthly benefit for the AG size.

EXAMPLE: \$973 Maximum Allotment for four
- 167 30% of net income
\$806 SNAP benefit for a full month

WVIMM § 4.4.2.B.2 *Standard Deduction* provides that a Standard Deduction is applied to the total non-excluded income counted for the AG, after application of the Earned Income Disregard. The amount of the Standard Deduction is found in Appendix B.

WVIMM § *Medical Expenses* provides that only medical costs not reimbursable through a third party (insurance, Medicaid, etc.) are deducted.

WVIMM § 4.4.2.B.7 *Shelter/Utility Deduction* provides:

After all other exclusions, disregards, and deductions have been applied, 50% of the remaining income is compared to the total monthly shelter costs and the appropriate SUA. If the shelter costs/SUA exceed 50% of the remaining income, the amount in excess of 50% is deducted. The deduction cannot exceed the shelter/utility cap found in Appendix B.

WVIMM § 4.4.2.C *Shelter Expense* provides:

Items considered in arriving at shelter expenses are the continuing amounts of:

- Rent.
- Mortgage payments. This includes second mortgages and home equity loans and any other loans for which the dwelling is used as collateral.
- Interest on mortgage payments.
- Condominium and association fees, regardless of purpose for the fees.
- Payments to an escrow account established to pay property taxes and homeowner's insurance.
- Property taxes and special tax assessments on the structure and lot required by State or local law. This does not include assessments such as police and fire fees, unless the fee is based on property valuation.
- Insurance on the structure and lot.
- Cost of repairing the home that was damaged or destroyed due to a natural disaster or misfortune including, but not limited to, fire, flood, or freezing temperatures.
- A car payment when a homeless AG lives in their vehicle. Insurance on the vehicle itself when a homeless AG lives in their vehicle.

WVIMM § 4.4.2.C.1 *Standard Utility Allowance (SUA)* provides that SUAs are fixed deductions that are adjusted yearly to allow for fluctuations in utility expenses. AGs with utility expenses for both occupied and unoccupied homes may only use the SUA for one home of their choice. These deductions are the Heating/Cooling Standard (HCS), the Non-Heating/Cooling Standard (NHCS), and the One Utility Standard (OUS). The current SUA amounts are found in Appendix B. AGs

that are obligated to pay from their resources a utility expense that is billed separately from their shelter expenses are eligible for an SUA deduction.

Items not considered utilities include, but are not limited to:

- Cable/digital/satellite television service
- Internet service
- Utility deposits
- Pre-paid cell phones

Heating/Cooling Standard (HCS)

AGs that are obligated to pay a heating or cooling expense that is billed regularly are eligible for the HCS. There does not have to be a monthly bill for heating or cooling throughout the year, just a regular bill for heating or cooling during the appropriate season.

Non-Heating/Cooling Standard (NHCS)

AGs that do not qualify for the HCS but incur two or more utility expenses or at least one utility expense when sharing a residence that has two or more utilities, are eligible for the NHCS.

One Utility Standard (OUS)

AGs that do not qualify for the HCS or the NHCS, but incur one utility expense, are eligible for the OUS.

WVIMM § 4.4.4.A *Categorical Eligibility* provides that although there is no gross or net income test, countable SNAP income to determine the level of benefit is calculated the same way it is for all other SNAP AGs.

WVIMM § 1.4.19.B.1 *Amount* provides that once eligibility is established, the AG is eligible to receive the full monthly allotment of the SNAP benefits for the certification period.

DISCUSSION

Hearing Issue

At the onset of the hearing, the parties agreed that the Respondent's April 15, 2024 SNAP reduction was the issue of the hearing. During the hearing, the Respondent stipulated to an error by the Respondent in November 2023 that resulted in the Appellant receiving a higher SNAP issuance before her March 2024 eligibility review. The Respondent's representative testified that the Respondent's worker incorrectly continued deducting the Appellant's Medicare premium costs from the Appellant's income when determining her November 2023 SNAP allotment amount. The Appellant did not dispute the error but argued that she should not have been notified she was eligible for a higher allotment of SNAP benefits in November 2023 if she was not eligible for that amount.

During the hearing, the Appellant argued that errors were made in her case and requested that the Respondent issue more transparent notices in the future. The Appellant argued that she should not have been notified in writing of her eligibility for a higher amount of SNAP benefits in November

2023 if she were ineligible and they would later be reduced. The Appellant did not dispute that she received notice of the November 2023 SNAP allotment amount and testified that she would have accepted any amount offered. No evidence was submitted to indicate the Appellant appealed the November 2023 SNAP allotment decision within the allowable timeframe.

The Appellant testified that she felt she was ignored by the local office. The evidence revealed the Appellant requested a hearing in April 2024 but her request was not received by the Board of Review until July 2024. Although the Appellant's request for a fair hearing was received late, she was granted a hearing in the April 2024 SNAP reduction issue and no further relief can be granted regarding the untimely processed hearing request.

The Appellant argued that Medicare premium costs continued to be withdrawn from her unearned income and that she had not received any reimbursement for the Medicare premium costs she has paid since the onset of her Medicare premium assistance eligibility in November 2023. The Medicare premium withdrawal from the Appellant's unearned income is not within the purview of the Board of Review. The Hearing Officer can only determine whether the preponderance of the evidence established that the Respondent correctly excluded the Appellant's Medicare premium costs as an income deduction when determining her April 15, 2024 SNAP benefit allotment because she was eligible for Medicare premium assistance at the time of the allotment decision.

The submitted case comments reveal that on July 9, 2024, the Respondent backdated the Appellant's Medicare Premium Assistance coverage to November 2023 and a case was opened regarding the Appellant's delayed reimbursements for premiums already paid.

At the onset of the hearing, the parties agreed that the issue to be determined in the instant matter was the April 15, 2024 SNAP allotment reduction, not the November 2023 Medicaid eligibility decision. Therefore, only the issue of the Appellant's April 15, 2024 SNAP allotment reduction is addressed in this decision.

April 15, 2024 SNAP Allotment

During the hearing, the Respondent's representative testified that the Appellant was categorically eligible. Under the regulations, the Appellant was not required to meet net and gross income eligibility standards to qualify for the minimum amount of monthly SNAP benefit allotment due to her categorical eligibility. However, the policy stipulates that countable income is calculated the same way it is for all other SNAP AGs to determine the level of SNAP benefit.

The evidence revealed the income reflected on the Respondent's record is consistent with the increased amount of income the Appellant reported on her PATH form. During the hearing, the Appellant did not contest the AG size, amount of income, shelter costs, standard deduction, or shelter/utility deductions used by the Respondent to calculate the amount of the AG's SNAP allotment. The Appellant only disputed the Respondent's discontinuation of the Medicare premium expense deduction from her income when calculating the AG's monthly SNAP allotment.

The case comments indicate the Appellant was eligible for Medicare premium assistance at the time of the April 15, 2024 SNAP allotment decision. Because the evidence demonstrated that the Appellant was eligible for Medicare premium assistance in April 2024, the AG could expect to be reimbursed for any Medicare premium costs incurred pending the onset of her coverage. As the AG could expect to be reimbursed for the Medicare premium costs, the expense could not be counted as a medical expense deduction when calculating her SNAP allotment amount. According to the policy, only medical expenses that cannot be expected to be reimbursed can be considered for income deduction. The preponderance of evidence revealed that the Respondent correctly discontinued deducting Medicare premium costs from the Appellant’s income when calculating the Appellant’s April 2024 monthly SNAP benefit allotment amount.

Testimony was provided regarding Medicare premium assistance costs but evidence was not presented to indicate the Appellant was eligible for additional medical expense deductions at the time of the April 2024 eligibility determination.

The Appellant argued that she felt that the Respondent’s April 15, 2024 reduction of her SNAP benefits was personal and punishment for reporting issues with her Medicare premium assistance. The evidence revealed that the allotment amount was correctly determined according to policy instructions and not arbitrarily determined by the Respondent’s worker.

According to the policy, the SNAP allotment is calculated as follows:

The standard income deduction is applied to the AG’s income. As the Appellant’s AG did not have earned income, only the AG’s unearned income was considered.

\$1,517.90	Unearned Income
<u>- 198.00</u>	Standard income deduction
\$1,319.90	Adjusted income

To determine the amount of the shelter deduction, the AG’s shelter costs must be combined with the applicable utility standard for the AG size. The policy provides that for a two-person AG, the HCS was \$496.

\$ 481.40	AG’s shelter costs
<u>+ 496.00</u>	Utility standard
\$ 977.40	Shelter/Utility costs

The policy instructs that 50% of the adjusted income must be subtracted from the shelter/utility costs:

$\$1,319.90 \div 2 = \659.95 50% of adjusted income

To determine the amount of excess shelter utility costs, 50% of the adjusted income is subtracted from the shelter/utility costs:

\$977.40	Shelter/Utility costs
<u>-659.95</u>	50% of adjusted income
\$317.45	Excess shelter utility costs (shelter/utility deduction)

To determine the net adjusted income, the shelter/utility excess costs are subtracted from the adjusted income.

\$1,319.90	Adjusted income
<u>- 317.45</u>	Excess shelter utility costs
\$1,002.45	Net adjusted income

Then, thirty percent of the net adjusted income must be calculated.

$$\$1,002.45 \times .30 = 300.735$$

Under the regulations, if 30% of the household's net income ends in cents, the State agency shall round the 30% of net income up to the nearest higher dollar; or not round the 30 percent of the net income at all. Instead, after subtracting the 30% of net income from the appropriate AG allotment, the State agency shall round the allotment down to the nearest lower dollar.

To determine the amount of the SNAP allotment, 30% of the net adjusted income is subtracted from the maximum SNAP allotment for the AG size. At the time of the April 2024 allotment decision, \$525 was the maximum SNAP allotment for a two-person AG.

\$535	Maximum SNAP allotment for two-person AG
<u>-300.735</u>	(30% of Net Adjusted Income)
\$234.265	

After rounding the allotment down to the nearest lower dollar, the Appellant's monthly SNAP benefit allotment was \$234, as calculated by the policy. This amount is consistent with the Respondent's allotment decision.

CONCLUSIONS OF LAW

- 1) Only medical costs not reimbursable through a third party (insurance, Medicaid, etc.) are deducted from the AG's income as a medical expense.
- 2) The evidence revealed that the Appellant was eligible for Medicare premium assistance at the time of the Respondent's April 15, 2024 calculation of the Appellant's \$234 SNAP allotment amount.
- 3) The preponderance of evidence revealed that because the AG could expect to be reimbursed for Medicare premium costs incurred pending the onset of coverage, the

Respondent correctly excluded the Appellant's Medicare premium costs when determining the AG's April 2024 SNAP benefit allotment amount.

- 4) The preponderance of evidence demonstrated the Appellant's AG was eligible for a \$234 monthly SNAP allotment in April 2024.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's April 15, 2024 decision regarding the amount of the Appellant's SNAP benefit allotment.

ENTERED this 30th day of August 2024.

Tara B. Thompson, MLS
State Hearing Officer