

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Jane L Doe,

Appellant.

Docket No. 04-2018-PA-12345

FINAL ORDER

Agency: Department of Social and Health
Services

Program: Food Assistance

Agency No. 1234567

1. ISSUE

- 1.1 Should the Appellant's food allotment be reduced to \$0 per month effective May 1, 2018?

2. ORDER SUMMARY

- 2.1 The Appellant's food allotment is reduced to \$0 per month effective May 1, 2018.

3. HEARING

- 3.1 Administrative Law Judge: John Smith
- 3.2 Hearing Date: May 4, 2018 by telephone conference.
- 3.3 Appellant: Jane Doe appeared and represented herself.
- 3.4 Agency: Hearing Coordinator, Jennifer Jones, appeared and represented the Department of Social and Health Services (the Department), Yakima Community Services Office (CSO)
- 3.5 Evidence Considered: The sworn testimonies of Jennifer Jones and Jane Doe and exhibits 1 through 14 were entered into the record and considered in this decision.

4. FINDINGS OF FACT

- 4.1 The Appellant, Jane Doe, is 57 years old and suffers from post-traumatic stress disorder (PTSD), asthma, chronic obstructive pulmonary disease (COPD), memory problems, and ongoing recovery from breast cancer. Her husband, John, is 62 years old. Their daughter, Jane, is 17 years old. They purchase and prepare meals together and receive full coverage of their medical expenses through Medicaid.

- 4.2 Mrs. Doe receives a pension of \$480.36 a month. This pension remains unchanged since October 2017. The Social Security Administration (SSA) considers Mrs. Doe to be disabled. SSA awarded paid her Supplemental Security Income (SSI) benefits up until January or February 2018. Mrs. Doe is presently contesting through the SSA the termination or suspension of her SSI benefits. She explains that SSA believes that she failed to report her pension payments to SSA despite her prior disclosures to them about her pension.
- 4.3 Mr. John Doe turned 62 years of age on January 4, 2018 and became eligible for early retirement benefits through SSA. He applied for those benefits and SSA has awarded him \$839 a month effective April 2018.
- 4.4 Based on Mr. Doe's retirement claim, SSA also awarded Jane a monthly payment of \$569 per month effective May 2018.
- 4.5 The combined monthly income of Mrs. Doe's household is \$1,888.36 which is comprised of her \$480.36 pension, Mr. Doe's retirement benefits of \$839, and Jane's benefits of \$569.
- 4.6 The CSO did not require Mrs. Doe or members of her household to report the changes in their income from the SSA because it shares data with SSA. SSA reported the changes in payments to the CSO through their data sharing system.
- 4.7 Mrs. Doe and her husband pay \$400 a month for the rental of their lot on which their mobile home sits. Their heating and cooling costs are paid separately from their rent. They do not pay any other fees associated with their rent other than a payment processing fee of \$4.
- 4.8 The CSO recertified Mrs. Doe's food allotment in October 2017 and changed the previous amount to \$249 effective December 1, 2017. Because of unanticipated changes in the income and rent of the household, the CSO adjusted the food allotment three more times before the last change in April 2018.
- 4.9 The last adjustment prompted the CSO to issue a notice dated April 14, 2018 which is intended to reduce the food allotment from \$504 to \$0 effective May 1, 2018. The CSO claims this change occurred because Mr. Doe and Jane were awarded benefits from SSA. Mrs. Doe received the notice from the CSO and promptly filed a hearing request on April 20, 2018.
- 4.10 Mrs. Doe believes that the last notice she received from the CSO claims the food allotment is being reduced because she failed or refused to report changes in her household income. However, the notice does not contain any such allegation. The CSO asserts that the adjustment would have occurred no matter whether Mrs. Doe reported the changes in income or whether she did not report those changes.

5. CONCLUSIONS OF LAW

- 5.1 **Jurisdiction:** There is jurisdiction to hear and decide this matter pursuant to Revised Code of Washington (RCW) 74.08.080 chapter 34.05 RCW and chapter 388-02 Washington Administrative Code (WAC)WAC 388-450-0070(1).
- 5.2 **Department's Rules as the First Source:** The undersigned is required to first apply the Department's rules adopted in the Washington Administrative Code (WAC). WAC 388-02-0220(1). If no Department rule applies, then the undersigned may decide the issue according to the best legal authority and reasoning available, including federal and Washington State constitutions. WAC 388-02-0220(2).
- 5.3 **Assistance Unit:** An assistance unit (AU) is a group of people who live together and whose income and resources are counted to decide if they are eligible for food assistance and the amount they get. WAC 388-408-0034. Parents and their children in the home must be considered together as one unit. WAC 388-408-0035. Mrs. Doe, her husband and her daughter are an "assistance unit" (AU) under the food assistance program.
- 5.4 **Federal Poverty Guidelines:** The Department has not published the amount of the federal poverty guidelines (FPG). However, WAC 388-478-0060 states that 165% of the poverty level for a household of three is \$2,808 which translates to a FPG of \$1,701 per month (\$2,808 divided by 165%). 200% of this amount is \$3,402 per month. The FPG is set forth in federal rules. According to 83 Federal Register (F.R.) §2642, the 2018 FPG for a family of three is \$20,780 a year or \$1,732 a month. Therefore, 200% of the FPG is \$3,464 a month. Whether we use the amount in WAC 388-478-0060 or in 83 F.R. §2642, the result is the same. Mrs. Doe's assistance unit has income which is less than 200% of the FPG.
- 5.5 **Categorically Eligibility:** AU's must have income which is below the maximum gross income limit and the maximum net monthly income limit unless the AU is classified as "categorically eligible". WAC 388-400-0040(4). For an AU of three, the gross income limit is \$2,213 and the net income limit is \$1,702. WAC 388-478-0060(1).
- 5.6 Mrs. Doe and her assistance unit are considered "categorically eligible" for the food program because their income is less than 200% of the FPG. WAC 388-414-0001(2). The maximum income limits of \$2,213 (gross) and \$1,702 (net) are not applicable to them. However, even though they are "categorically eligible", they still must satisfy many of the food assistance requirements to receive a food allotment. WAC 388-414-0001(1)(d). This includes the budgeting of her household's income under chapter 388-450 WAC. This budgeting process is used to calculate the amount of the food allotment.
- 5.7 **Elderly and Disabled:** WAC 388-400-0040(8) defines an elderly person as one who is age 60 or older. WAC 388-400-0040(9) defines a disabled person as one

who receives disability payments under the Social Security Act. Mr. Doe is considered “elderly”. There is no need to determine whether Mrs. Doe is a disabled person due to Mr. Doe being considered elderly and the AU having no out-of-pocket medical expenses.

- 5.8 **Countable Income:** WAC 388-450-0162 defines “countable income”. The definition includes all unearned and earned income less deductions and exclusions. This includes social security benefits, retirement benefits, disability benefits and Supplemental Security Income. All of the benefits that Mrs. Doe’s AU receives are considered income. This is a total of \$1,888.36.
- 5.9 **Exclusions from Income:** WAC 388-450-0015 lists the types of income which must be disregarded or excluded from the assistance unit (AU) income. The pension, retirement benefits and SSA payments that Mrs. Doe’s AU receives are not listed under this regulation and therefore, may not be excluded from consideration. Also, under WAC 388-450-0070, “earned” income of a child who is still in school may be excluded from consideration. However, since the SSA benefits that Jane receives from SSA are not “earned”, they must be counted as income and may not be excluded from consideration. Based on the rules, all of the AU’s income must be counted when determining the amount of Mrs. Doe’s food allotment.
- 5.10 **Deductions from Income:** WAC 388-450-0185(2) lists deductions which may be subtracted from the AU income when calculating the food allotment. These include: (a) a standard deduction; (b) 20% of earned income; (c) dependent care expenses, (d) medical expenses over \$35 per month; and (e) a portion of the shelter costs as described in WAC 388-450-0190.
- 5.11 **Standard Deduction:** The standard deduction for an assistance unit (AU) of three (3) people is \$160 per month. Therefore, Mrs. Doe’s AU should be entitled to a standard deduction of \$160 per month. WAC 388-450-0185(2)(a)
- 5.12 **Earned Income Deduction:** Since no one in Ms. Doe’s AU works or earns wages, the “earned” income deduction is inapplicable. WAC 388-450-0185(2)(b).
- 5.13 **Medical Costs Deduction:** Mrs. Doe’s AU is not entitled to deductions for uninsured medical costs, even though she may be disabled, because their medical costs are fully covered and they have no out-of-pocket medical expenses. WAC 388-450-0185(2)(d).
- 5.14 **Dependent Care Deductions:** Ms. Doe’s AU is not entitled to any deductions for dependent care expenses, as they did not incur these costs. WAC 388-450-0185(2)(c).
- 5.15 **Summary of Income and Deductions:** Mrs. Doe’ AU unearned income of \$1,888.36 less the \$160 standard deduction (and no earned income deductions, no medical costs deductions and no dependent care deductions) leaves them net income of \$1,728.36 for the purpose of determining the food allotment.

- 5.16 **Shelter Cost Deduction:** The last deduction is more complicated to calculate. It is a portion of the total shelter costs. WAC 388-450-0185(2)(e). The formula for this deduction is set forth in WAC 388-450-0190. This “portion” is known as the “shelter cost deduction”.
- 5.17 **Shelter Costs:** First, all shelter costs for the AU must be added up. WAC 388-450-0190(1). For Mrs. Doe, she and her AU only have shelter costs of \$400 (rent) a month. They do not have any property taxes, homeowner’s or condo fees, homeowner’s insurance, out-of-pocket repairs for disasters, or expenses for a temporarily unoccupied home. Her shelter costs, without utilities, are \$400 a month.
- 5.18 **Utility Allowance:** The “utility allowance” is not the same as the actual utility costs paid by Mrs. Doe’s AU. Instead, it is calculated using the standards in WAC 388-450-0195. Utilities are the costs not included in the rent or mortgage payment which may include heating or cooling fuel, electricity or gas, water or sewer, well or septic tank maintenance, garbage and trash collection and telephone service. WAC 388-450-0195(3). Mrs. Doe’s AU should be allowed a standard utility allowance of \$421 per month since she pays for heating and cooling separately from her rent. WAC 388-450-0195(2)(a).
- 5.19 **Total Shelter Costs:** The total of Mrs. Doe’s rent (shelter cost) and the standard utility allowance (SUA) is called the “total shelter costs”. Her AU’s “total shelter costs” are \$821 (\$400 for rent plus \$421 SUA).
- 5.20 **Calculation of Shelter Cost Deduction:** Next, to determine the amount of the total shelter costs that may be used as a deduction from AU’s net income, we must calculate one-half of the “countable income” and then subtract it from the “total shelter costs”. WAC 388-450-0190(3). “Countable income” is the total AU income less all deductions for which the AU is eligible under WAC 388-450-0185(1) through (4). WAC 388-450-0190(2). The deductions in WAC 388-450-0185(1) through (4) include the standard deduction, the 20% earned income deduction, dependent care expenses, and medical expenses.

For Mrs. Doe, the countable income that we previously calculated was \$1,728.36. (See *calculation in paragraph 5.15*). One half of this amount is \$864.18. This amount must then be subtracted from the total shelter costs. Since \$864.18 (one-half of the countable income) is more than the total shelter costs of \$821, there is no “excess” and therefore, Mrs. Doe is not entitled to a shelter deduction.

- 5.21 **Calculation of Countable Income:** Since there is no shelter cost deduction, the net income becomes the countable income. This amount is \$1,728.36.
- 5.22 **Calculation of the Allotment:** WAC 388-412-0015 states that the food allotment is determined according to WAC 388-450-0162. Under WAC 388-450-0162(5)(b), we start with the maximum allotment for the AU size then subtract 30% of the AU’s countable income. The allotment for a three (3) person AU is \$504 a month. WAC

388-478-0060. 30% of \$1,728.36 is \$518.50 per month. Deducting this amount from the maximum allotment results in a negative amount. This means that Mrs. Doe's countable income is more than the maximum allotment and therefore, since the income exceeds the maximum, she and her AU are entitled to \$0 as a food allotment.

5.23 Mrs. Doe's food allotment should be reduced to \$0 per month beginning May 1, 2018.

6. ORDER

6.1 The Appellant's food allotment is reduced to \$0 per month effective May 1, 2018.

Dated: May 11, 2018

John Smith

John Smith
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

Reconsideration: You have the right to request that the Administrative Law Judge (ALJ) reconsider this Final Order. RCW 34.05.470 and WAC 388-02-0605. Your request must be in writing and must be received by the ALJ within ten (10) calendar days of the mailing date of the Final Order. You may use the enclosed Request for Reconsideration form. If the reconsideration request is not received within this ten-day period, it will not be considered, and the timeline to ask for superior court review continues to run. Send your request to the following address:

Office of Administrative Hearings
16201 E. Indiana Avenue, Suite 5600
Spokane Valley, WA 99216
Phone: (800) 366-0955
Fax: (509) 456-3997

If the reconsideration request is timely, the ALJ then has twenty (20) days to either decide the request or mail you and the other parties a written notice specifying the date the ALJ will decide the request. The reconsideration request is denied if no action is taken by the ALJ within the twenty-day period. If the request is timely, the timeline to ask for superior court review will start on the date the reconsideration order is mailed.

Superior Court Review: You also have the right to appeal this Final Order to superior court within thirty (30) calendar days of the mailing date of the Final Order. RCW 34.05.542(3) and WAC 388-02-0645. You do not need to file a request for reconsideration before requesting review in superior court. DSHS cannot request superior court review. Please refer to WAC 388-02-0650 for information about how to serve your request for superior court review.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served this document on each of the parties listed below. I mailed a copy to the parties at their addresses of record using Consolidated Mail Services or U.S. Mail.

Region 1 CSO
PO Box 11699
Tacoma, WA 98411-6699

Administrative Hearing Coordinator

Jane L Doe
12345 Washington Street
Yakima, WA 98903-1081

Appellant

CSD Administrative Hearings Program Manager
P.O. Box 45440
Olympia, WA 98504-5440

Dated _____ at Spokane Valley, Washington.
(DATE OF MAILING)

Representative
Office of Administrative Hearings
16201 E. Indiana Avenue, Suite 5600
Spokane Valley, WA 99216