



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

August 5, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 2, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits through the Supplemental Nutrition Assistance Program (SNAP) based on the imposition of a third (12-month) work penalty.

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 for SNAP benefits is based on current policy and regulations. Some of these regulations state that all SNAP recipients are subject to a work requirement, unless exempt. Among the work requirements for SNAP participation is cooperation with SNAP E&T [Employment and Training] and registration with BEP [Bureau of Employment Programs]. A SNAP penalty is imposed when individuals do not comply with work requirements. First violation - The individual is removed from the AG [assistance group] for a minimum of 3 months. If non-compliance continues, the penalty continues until the failure or refusal stops or until the individual reports a change that makes him exempt. Second violation: The individual is removed from the AG for at least 6 months or until he meets an exemption, whichever is less. Third and subsequent violations result in the individual being removed from the AG for at least an additional 12 months or until he meets an exemption, whichever is less. If after the 12 months, the individual has not complied or met an exemption, the penalty continues until the failure or refusal ceases or until the individual reports a change that makes him exempt. (West Virginia Income Maintenance Manual Sections 13.2 & 13.6)

Information submitted at your hearing reveals that you failed to comply with SNAP E&T, however, the SNAP penalty shall be modified to reflect a 2nd SNAP violation (6 months or meet an exemption) as you were not notified of the 2nd violation resulting from your failure to register with BEP in July 2010.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to apply a 2nd penalty to your SNAP benefits for failing to comply with work requirements. The SNAP penalty began effective June 1, 2011.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Donald Calloway, ESS, WVDHHR

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

-----,

CLAIMANT,

v.

Action Number: 11-BOR-1319

**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 concluded 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 August 2, 2011 on a timely appeal filed June 7, 2011.

II. PROGRAM PURPOSE:

The purpose of the SNAP Program 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 EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

-----, Claimant

Donald Calloway, ESS, WVDHHR – Department Representative

Virginia Layton, SNAP E&T (Employment and Training) Case Manager – Department's witness

Presiding at the hearing was Thomas Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Agency was correct in its decision to impose a SNAP penalty in the Claimant's case.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 13.2, 13.5 and 13.6
7 CFR § 273.7 Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- Exhibit A Notice of Decision - dated 4/11/11
- Exhibit B Appointment letter from SNAP E&T – dated 4/11/11
- Exhibit C Notice of Decision – dated 4/27/11
- Exhibit D Fair Hearing Request Form (DFA-FH-1) – Received June 7, 2011
- Exhibit E WVIMM Policy Manual, Chapters 13.2, 13.5 and 13.6
- Exhibit F RAPIDS Screen AIFW (History of 2 previous SNAP work penalties – 12/20/09 & 7/20/10)
- Exhibit G First Penalty Notice: Notice of Decision – dated 12/11/09
- *Exhibit H Correspondence received from the Department on August 3, 2011 indicating the Claimant was not provided written notice of the July 2010 SNAP penalty

*The record remained open until close of business on August 4, 2011 to allow the Department an opportunity to verify the Claimant was provided written notice of the 2nd SNAP penalty that was reportedly applied in July 2010.

VII. FINDINGS OF FACT:

- 1) By a Notice of Decision dated April 11, 2011 (Exhibit-A), the Claimant was notified that her April 8, 2011 application for SNAP benefits was approved. This notice goes on to indicate in third paragraph of section 3 that she is a mandatory SNAP Work Program participant and that failure to participate, without good cause, may result in benefits being reduced or terminated.
- 2) On April 11, 2011, Ginny Layton, a Case Manager with Supplemental Nutrition Assistance Program Employment & Training, hereinafter SNAP E&T, notified the Claimant of a SNAP E&T appointment scheduled on April 26, 2011 at 10:00 a.m. The Department noted that the Claimant failed to appear for the scheduled SNAP E&T appointment.
- 3) On or about April 27, 2011, the Claimant was notified via a Notice of Decision (Exhibit-C) that her SNAP benefits were terminated. This notice indicates that a 3rd penalty has been applied due to her failure to comply with SNAP E&T. The notice indicates that the Claimant will be ineligible for SNAP benefits for 12 months or until compliance, whichever is longer - "You will not receive this benefit after May 2011." Because the Claimant's appeal was not filed until June 7, 2011, benefits were not continued and the penalty was imposed effective June 1, 2011.

- 4) The Claimant contends that she was never made aware of the two previous SNAP penalties and that she did not receive the SNAP E&T appointment letter (Exhibit-B) that resulted in the third penalty.
- 5) Ginny Layton, the Claimant's SNAP E&T Case Manager, testified that she mailed the notice of the SNAP E&T appointment (Exhibit-B) to the address provided by the Claimant. Ms. Layton went on to testify that she does not recall the notice being returned by the U.S. Post Office.
- 6) The Department presented Exhibit-F to show that two previous work penalties had been applied to the Claimant's case in December 2009 and July 2010. When the Claimant alleged that she had never been notified of the two previous penalties, the Department was afforded an opportunity to verify notification had been sent. The Department was able to present Exhibit G verifying the first penalty notice (December 2009) was sent to the Claimant when she was a member of her mother's SNAP assistance group (AG), however, the Department was unable to verify notice of the 2nd penalty (July 2010). As a result, the record remained open until close of business on August 4, 2011 to allow the Department an opportunity to provide verification that the Claimant was notified of 2nd SNAP penalty.
- 7) Exhibit H, received timely by the Board of Review on August 3, 2011, confirms that the Claimant was not provided notice of the 2nd penalty due to an administrative error.
- 8) West Virginia Income Maintenance Manual Chapter 13.2 (General Snap Work Requirements and Exemptions). SNAP E&T requirements are met for applicants who agree to cooperate with SNAP E&T. Failure to agree results in ineligibility of the individual until he complies or reports a change which makes him exempt. This section of policy provides reasons for which an individual can be found exempt from participation (employment, disability, etc. . .) Failure to cooperate with SNAP E&T results in the application of a penalty for failure to meet the work requirement.
- 9) West Virginia Income Maintenance Manual, Chapter 13.5.A.1 provides "other work requirements" for SNAP and states that all mandatory individuals must register for employment with WORKFORCE WV/BEP, referred to in this section as BEP, within 30 days of the date of the original approval, unless exempt according to Section 13.2, or referred to SNAP E&T. Recipients must register every 12 months thereafter, regardless of the length of time that BEP considers the registration valid. Actions which constitute a registration are defined by BEP. Once the client registers with BEP for SNAP purposes, he cannot be required to register more often than every 12 months, even when the benefit is opened and closed within the 12-month period.
- 10) West Virginia Income Maintenance Manual, Chapter 13.6, states in part - A SNAP penalty is imposed when individuals do not comply with work requirements. Penalties are: First violation - The individual is removed from the AG for a minimum of 3 months. If non-compliance continues, the penalty continues until the failure or refusal stops or until the individual reports a change that makes him exempt. Second violation: The individual is removed from the AG for at least 6 months or until he meets an exemption, whichever is less. Third and subsequent violations result in the individual being removed from the AG for at least an additional 12 months or until he meets an exemption, whichever is less.

If after the 12 months, the individual has not complied or met an exemption, the penalty continues until the failure or refusal ceases or until the individual reports a change that makes him exempt according to Section 13.2.A.2.

VIII. CONCLUSIONS OF LAW:

- 1) Policy and regulations that govern the SNAP Program direct recipients who are not otherwise exempt (employed, disabled, etc. . .), must meet SNAP work requirements – registration with BEP and/or cooperate with SNAP E&T. The determination has been made that the Claimant is not exempt from SNAP work requirements.
- 2) The facts of this case demonstrate that the Claimant was only notified of a 1st SNAP penalty when she failed to register with BEP in December 2009 - The Department acknowledged the Claimant was not notified of the 2nd penalty in July 2010.
- 3) The Claimant's contention that she did not receive the SNAP E&T appointment letter is without merit. It is the Claimant's responsibility to provide the Department with a reliable mailing address. Moreover, there was no evidence provided to indicate a history of problems with receiving her mail (police report or a report to the Post Office) and the Claimant received the April 27, 2011 penalty notice sent to the same address. The Claimant was not compliant with SNAP works requirements when she missed her April 26, 2011 appointment with SNAP E&T.
- 4) Because the Claimant failed to cooperate with SNAP E&T, the Department was correct to impose a penalty for non-compliance with SNAP work requirements. However, because the Claimant was not notified of the 2nd penalty in July 2010 - the penalty imposed effective June 2011 will be the Claimant's 2nd SNAP penalty – the Claimant will ineligible for SNAP for a period of 6 months or until she meets an exemption, whichever is less.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to apply a 2nd penalty to your SNAP benefits for failing to comply with work requirements. The SNAP penalty began effective June 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of August, 2011.

**Thomas E. Arnett
State Hearing Officer**