



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

**Joe Manchin III**  
Governor

Board of Review  
P.O. Box 1736  
Romney, WV 26757

**Patsy A. Hardy, FACHE, MSN, MBA**  
Cabinet Secretary

March 18, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 16, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to deny you application for the Low Income Energy Assistance Program (LIEAP) due to your use of a portable kerosene heater.

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 LIEAP assistance is based on current policy and regulations. Some of these regulations state that eligibility for LIEAP is based on a number of factors, including income, AG (assistance group) size, vulnerability to the cost of home heating, residence and citizenship. Policy further indicates that portable heating devices are not considered primary sources of heating except when an emergent life-threatening situation exists, the dwelling is totally without a heating source, and the AG has no alternate housing available.

The information which was submitted at your hearing revealed that approval of kerosene heating for your dwelling would have been dangerous to your well-being and detrimental to program goals.

It is the decision of the State Hearing Officer to Uphold the action of the Department to deny your application for LIEAP assistance for approval of portable kerosene heating.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Ann Hubbard, ESS

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

-----,

**Claimant,**

v. **Action Number: 10-BOR-809**

**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 on March 18, 2010 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 March 16, 2010 on a timely appeal, filed February 5, 2010.

**II. PROGRAM PURPOSE:**

The goal of the Low Income Energy Assistance Program (**LIEAP**) is to provide financial assistance to eligible households that are affected by rising costs of home heating which are excessive in relation to household income. It is not the purpose of this program to meet the entire cost of home heating during the winter season. Instead, the program is designed to partially offset the continuing rise in costs of home heating.

**III. PARTICIPANTS:**

-----, Claimant  
Ann Hubbard, Economic Service Supervisor

Presiding at the Hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its decision to deny the Claimant's application for LIEAP assistance for use with a portable kerosene heater.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Chapter 26.2

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 Approval Notice dated January 15, 2010
- D-3 Denial Notice dated January 27, 2010
- D-4 West Virginia Income Maintenance Manual Chapter 26.2

**VII. FINDINGS OF FACT:**

- 1) On December 14, 2009, the Claimant applied for the Low Income Energy Assistance Program, hereinafter LIEAP. Ann Hubbard, Economic Service Supervisor, testified that the Claimant reported at his application a household composition of himself and that he currently was unemployed receiving no financial support from any entity. Additionally, the Claimant reported that he heated his dwelling with kerosene heat. The Claimant was asked to provide additional information by completing a "zero income statement" and return the requested documentation to the Department in an established timeframe.
- 2) The Claimant completed the request and provided all additional information to the Department on January 14, 2010. Ms. Hubbard stated that the Claimant's application for LIEAP assistance was approved on this date and the Claimant was issued Exhibit D-2, Approval Notice, notifying him that his application had been approved for a one-time payment of Four Hundred and Forty Five Dollars (\$445.00).
- 3) On January 19, 2010, the Claimant inquired with the Department as to when he should expect to receive the notified payment. At this visit, the Department discovered that the Claimant had been living in a tent on his sister's property and was heating his dwelling with a kerosene space heater.
- 4) Upon discovery of the Claimant's living situation and the use of a portable heating device, the Department intercepted the LIEAP payment and issued Exhibit D-3, Denial Notice. This notice in pertinent part documents the following:

Your application for regular LIEAP has been denied effective 1/19/10.

Here is why: Chapter 26.2.d states:

Portable heating devices such as, but not limited to, electric and kerosene space heaters, are not considered primary sources of heating except when an emergent life-threatening situation exists, the dwelling is totally without a heating source, and the AG has no alternate housing is [sic] available.

- 5) -----, Claimant, stated that he has no established residence and he is residing in a travel trailer on his sister's property in which he has a tent covering the top of the dwelling to protect him from the elements. ----- made reference to the Department's denial notice in regards to no alternative housing. ----- testified that most of the homeless shelters in ██████████ County have no vacancies and such shelters with vacancies do not allow pets. The Claimant testified he is not willing to place his dog in an animal shelter. The Claimant's testimony also revealed that his sister cannot provide shelter for him in her home as there are two adults and five children residing in the home and the residence does not have "floor space" for him to sleep.

The Claimant indicated that since the denial of his LIEAP application he has been gathering wood from the property and using it for his heat source. He stated that he builds a fire outside of his tent area and radiates heat into the dwelling with the use of aluminum trash cans. He purported that he does not pay for wood heat.

- 6) Ms. Hubbard testified that policy stipulates that exceptions to policy regarding portable heaters require supervisory approval. Ms. Hubbard believed that the Claimant's living situation along with a portable heater could cause a potential health and fire risk to the Claimant and other individuals therefore she did not exercise supervisory approval to approve the use of kerosene heat. The Claimant indicated that he was responsible with his heat setup and dwelling and would not be reckless in regards to the kerosene heat.
- 7) West Virginia Income Maintenance Manual Chapter 26.2 d indicates:

Portable heating devices such as, but not limited to, electric and kerosene space heaters, are not considered primary sources of heating except when an emergent life-threatening situation exists, the dwelling is totally without a heating source, and the AG has no alternate housing available.

It is considered dangerous to AG members and detrimental to program goals to heat a dwelling with space heaters. Such use must not be encouraged. Exceptions require supervisory approval.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy stipulates that portable heating devices such as kerosene are not considered primary sources of heating except in case of an emergent life-threatening situation, the dwelling is totally without a heating source, or the household has no alternative housing available.
- 2) Testimony revealed that the Claimant currently resides in an undesirable living situation on a sibling's property. The Claimant's testimony revealed that he has tried to gain admittance in a homeless shelter but such shelters prohibit animals or pets. The Claimant also identified that he heats his dwelling with wood from the land in which he resides which establishes that the Claimant is not totally without a heating source or vulnerable to rising heating costs.
- 3) Testimony from the Claimant did not reveal the existence of a life-threatening situation, the inability to heat the dwelling, or the unavailability of alternate housing. Based on the Claimant's current living situation any such approval of portable kerosene heat would be hazardous and potentially life threatening to the Claimant or others; therefore the Department was correct in its denial of the Claimant's LIEAP application.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the decision of the Department to deny the Claimant's application for LIEAP assistance.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of March 2010.**

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**Eric L. Phillips  
State Hearing Officer**