



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
P.O. Box 1247
Martinsburg, WV 25402

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

January 31, 2017

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1925

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 Health and Human Resources. These same laws and regulations are used in all cases to assure 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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: David Griffin, WV DHHR

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

████████████████████,

Appellant,

v.

Action Number: 15-BOR-1925

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

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 Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on January 26, 2017, on an appeal filed April 1, 2015.

The matter before the Hearing Officer arises from the decision by the Respondent to deny Low Income Energy Assistance Program (LIEAP) payment.

At the hearing, the Respondent appeared by David Griffin, Economic Service Supervisor. Appellant appeared *pro se* and testified on her own behalf along with ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV Income Maintenance Manual, Chapter 26, §26.2 (excerpt)
- D-2 Application for Low Income Energy Assistance Program (LIEAP), dated February 6, 2015
- D-3 Zero Income/Home Heating Cost Verification Form, signed and dated February 12, 2015
- D-4 Medicaid Application Form, signed and dated February 11, 2015
- D-5 Written statement from ██████████, signed and dated February 12, 2014
- D-6 Written statement from ██████████, signed and undated
- D-7 Notice of denial dated February 19, 2015

Appellant's Exhibits:

- A-1 Written statement from ██████████ store manager, signed and undated
- A-2 Written statement from ██████████, signed and undated

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 applied for LIEAP on February 6, 2015, reporting a hearing source of kerosene bought from [REDACTED] (a gas/convenience store), which was not paid by her, and that she had zero income. (Exhibit D-2)
- 2) On February 17, 2015, the Respondent received a Zero Income/Home Heating Cost Verification Form signed and dated by the Appellant marking her only living expense as shelter which she pays by providing “service by cleaning and household chore and other task [sic]”. (Exhibit D-3)
- 3) On February 11, 2015, the Appellant submitted a Medicaid application wherein she stated she was not employed, having no total income for the year and no anticipated income for the next year. (Exhibit D-4)
- 4) The Appellant submitted two written statements on February 17, 2015. One statement was signed by [REDACTED] stating “I have been providing assistant [sic] to [REDACTED] [Appellant] for the past several month [sic] on living expenses in exchange of household task [sic] and services.” (Exhibit D-5) The other statement was signed by the Appellant stating, “I [REDACTED] heat my home with a kerosene heater”. (Exhibit D-6)
- 5) The Respondent sent notification of denial on February 19, 2015. (Exhibit D-7)

APPLICABLE POLICY

WV Income Maintenance Manual (IMM) §26.1.A.2.a explains that in order to qualify for a LIEAP payment, an Assistance Group (AG) must be determined vulnerable or partially vulnerable to the cost of home heating. It further defines “Vulnerable AGs” as those which must pay the heating cost for the home in which they reside. The expense for heating must be billed separately from the rent or mortgage payment of the residence, even if the AG combines these payments. The amount billed for the heating cost must be stated on a rent receipt, lease, or other documentation.

IMM §26.1.A.2.d, Portable Heaters, defines 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. (Emphasis added)

IMM §26.1.A.2.f., Zero Income Applicants, states that when zero income applicants report that their home heating costs are being paid by someone else, vulnerability can be determined by the manner in which the heating costs are being paid. Applicants who report zero income but have someone else not living in the household who makes payment for the entire cost of home heating to the vendor on behalf of the applicant are considered invulnerable and therefore ineligible for LIEAP benefits.

DISCUSSION

The Appellant submitted a LIEAP application on February 6, 2015, stating she had no income and heated her home with kerosene purchased from ██████ but that she did not pay for the heating costs. On February 17, 2015, the Appellant submitted a Zero Income/Home Heating Cost Verification Form stating her only living expense was shelter which is paid by providing cleaning services. On that same day, she submitted a statement that she heats her home with a kerosene heater, in addition to a statement from ██████ that he provides the Appellant assistance for living expenses in exchange for household services. Based upon this information, the Respondent determined that the Appellant was not vulnerable by policy and, therefore, ineligible for LIEAP benefits. The Appellant contends that she is responsible for her own heating costs and that the kerosene heater is the only source of heat for her home.

The Appellant testified that a DHHR worker assisted her with the LIEAP application. She stated she explained to the worker her situation, and he filled out the application for her. She and her witness testified that she was paid \$60 week for cleaning services by him, and that a written statement was submitted for verification purposes in February 2015. Additionally, they testified that she also provided paid cleaning services for other individuals, but had no corroborating evidence. The statement provided at the hearing from Mr. ██████ stating that he paid the Appellant \$20 a day, three days a week, was not dated or date-stamped as received by the Department. Additionally, the Appellant's witness unconvincingly explained the other written statement (which was date-stamped by the Department stating he paid the Appellant's living expenses in exchange for her cleaning services) as submitted because the DHHR worker told him what to write. Interestingly, neither the Appellant nor her witness was able to explain her February 11, 2015 Medicaid application wherein she again states she is not employed and has a total income for the year of zero and an expected income the following year of zero. The totality of the credible evidence and testimony shows that the Appellant did not have any income or pay for her own heating costs.

Although the 2015 LIEAP denial was based upon the Appellant's invulnerability, it is noted that kerosene space heaters, per policy, 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. All three must be met and then exceptions to this policy require supervisory approval. It was at the discretion of the supervisor to approve an exception to this policy for the Appellant. No exception was made.

The Respondent showed by a preponderance of evidence that the Appellant had represented herself as having zero income and did not pay for heating costs herself. Per policy, the Appellant was not considered vulnerable to the cost of home heating to qualify for a LIEAP payment.

CONCLUSIONS OF LAW

- 1) The Appellant reported she did not have a home heating expense on her February 6, 2015 LIEAP application and Zero Income/Home Heating Cost Verification Form.
- 2) The Appellant reported she had zero income on her February 6, 2015 LIEAP application, her February 11, 2015 Medicaid application, and the written statement from [REDACTED] [REDACTED] date-stamped received by the local office on February 17, 2015, specifically stated she exchanged services for payment of her living expenses (which is noted only as shelter on the Zero Income/Home Heating Cost Verification Form).
- 3) Per policy, the Appellant was not vulnerable to the cost of home heating and, therefore, was ineligible for 2015 LIEAP benefits.

DECISION

It is the decision of the State Hearing Officer to **uphold** the denial of Appellant's 2015 LIEAP application.

ENTERED this 31st day of January 2017.

Lori Woodward, State Hearing Officer