



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL

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BOARD OF REVIEW  
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Jolynn Marra  
Interim Inspector General

February 28, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.:19-BOR-1089

Dear Mr. [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,

Danielle C. Jarrett  
State Hearing Officer  
Member, State Board of Review

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

cc: Darlene Smith, Department Representative

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

██████████,

**Appellant,**

v.

**Action Number: 19-BOR-1089**

**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 February 5, 2019, on an appeal filed January 16, 2019.

The matter before the Hearing Officer arises from the January 15, 2019 decision by the Respondent to deny the Appellant's application for Low-Income Energy Assistance Program (LIEAP) benefits.

At the hearing, the Respondent appeared by Darlene Smith, Economic Service Supervisor. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Decision, dated January 15, 2019
- D-2 West Virginia Income Maintenance Manual (WV IMM) § 21.3.1.C.4
- D-3 Email correspondence, dated January 16, 2019
- D-4 West Virginia Department of Health and Human Resources (WV DHHR) Application for LIEAP, dated January 2, 2019
- D-5 WV DHHR Application for LIEAP, dated January 25, 2018
- D-6 eRAPIDS computer system screenshot printout of Case Comments, dated November 21, 2018
- D-7 Internet screenshot printouts of Wal-Mart Infrared Quartz Electric Heater and Wal-Mart Mainstay Quartz Electric Heater with Thermostat

**Appellant's Exhibits:**

NONE

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 benefits on January 2, 2019. (Exhibit D-4)
- 2) The Appellant heats his home with an electric space heater as reported on his LIEAP application. (Exhibit D-4)
- 3) The Appellant's electric expense is not included in his rent/mortgage. (Exhibit D-4)
- 4) The Appellant is responsible for the payment of his electric bill through MonPower-First Energy Corporation (MonPower) and provided his account number at the time of application. (Exhibit D-4)
- 5) On January 14, 2019, a Department worker processed the Appellant's LIEAP application. (Exhibit D-6)
- 6) The DHHR Supplemental LIEAP Form was completed by a Department worker and indicated that space heaters were the Appellant's main source of heat and that MonPower's website reflected that the Appellant's home was not heated by electricity.
- 7) In 2018, the Appellant reported his home was heated by electric space heaters and was approved for LIEAP benefits.
- 8) On January 15, 2019, the Respondent issued a notice of decision to the Appellant. The notice advised the Appellant that his LIEAP application was denied due to "energy type not used to heat home" and "due to new ruling from State that you can't use space heaters to heat your house two (2) years in a row as it is unsafe to use." (Exhibit D-1)
- 9) The Appellant does not have access to a gas well for a heat source.
- 10) The Appellant has no other heating source available in his home.
- 11) Without the utilization of electric space heaters, the Appellant would be without a heating source and vulnerable to an emergent life-threatening situation.
- 12) The Appellant has no alternate housing available.

## APPLICABLE POLICY

WV IMM § 21.3.1 explains that eligibility for Regular LIEAP is based on income, assistance group (AG) size, vulnerability to the cost of home heating, residence, and citizenship.

WV IMM § 21.3.1.C reads 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.

WV IMM § 21.3.1.C.1 explains that vulnerable AGs are those which must pay the primary heating costs for the home in which they reside.

WV IMM § 21.3.1.C.4 Portable Heaters provides in part:

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 as must not be encouraged. Exceptions require supervisory approval.

WV IMM § 21.3.1.F reads that the customer account number of the utility or heating vendor must be provided at the application or within (15) days following the date the information was requested.

WV IMM § 21.3.1.G explains that action must be taken to approve or deny a Regular LIEAP application within thirty (30) days of the date the Department receives it.

WV IMM § 21.4.7.B Section II – Home Heating Information providers in part:

The client circles the correct number which applies to his circumstances. Item #F on the DFA-LIEAP-1 must be completed, regardless of whether or not the client's home heating supplier is a Public Service Commission (PSC) – regulated utility or a bulk fuel supplier. The client must provide information for their primary heating and electric source.

A LIEAP client may indicate a different primary source of home heating from the source indicated on previous applications. When this occurs, the Worker must carefully review the reasons for the change. If the client is changing heating sources to avoid payment of a home heating bill that exceeds the amount of the Regular LIEAP payment, the LIEAP application must be denied. Otherwise, the difference may result from a change in residence; with the home heating bill at the old residence settled, or a change in the heating source at the same residence. In these situations, the change is permitted.

WV IMM § 21.6.1 Cases Denied in Error provides in part:

When a case has been denied in error, the case must be re-entered in the eligibility system as unapproved in order to generate payment. The Worker must notify the client in writing that his Regular LIEAP application was denied in error and include the amount of the payment and to who payment will be made. The Worker must record the corrective action in the recording space in Section IV of the application form and in the eligibility system case comments, as appropriate.

### **DISCUSSION**

The Appellant submitted a LIEAP application on December 10, 2018, stating he receives \$790 per month income and that he heats his home with an electric space heater from Wal-Mart. The Appellant meets the income guidelines for LIEAP for a one-person AG. The Appellant reported that electric is his main heating source. He has an electric account with MonPower. Based upon this information, the Respondent determined that the Appellant was not vulnerable by policy and, therefore, ineligible for LIEAP benefits.

On January 15, 2019, the Respondent issued a notice of denial to the Appellant for LIEAP benefits stating that LIEAP was denied for “energy type not used to heat home” and “due to a new ruling from the State that you can not use space heaters to heat your house two (2) years in a row as it is unsafe to use.” The Appellant contends his application should have been approved because he is responsible for his own heating costs, that his electric portable space heater is the only source of heat for his home and it was a safe heating source. The Appellant demonstrated during the hearing that the space heater he uses is a cool touch unit.

During 2018, the Appellant reported he heated his home with an electric space heater and was approved for LIEAP benefits. The Appellant was confused why he received the benefit the previous year but was denied in 2019. The Respondent testified that when the Department’s computer eligibility system denied the Appellant’s LIEAP application she sent email correspondence to DHHR- Bureau of Children and Families (BCF) Policy Unit for clarification regarding the denial. A Senior Policy Specialist responded via email that “portable space heaters are not allowed without approval, it was the decision of the Director to allow it once, and that they do not want to encourage the continuous use as portable space heaters are considered dangerous.” The Respondent based its decision to deny on the Senior Policy Specialist advice.

The Appellant testified that his home sits on a parcel of land that is 5.85 acres and included a gas well which supplied limited free gas to his home. The Appellant indicated that the well was abandoned approximately three (3) years ago and it was no longer in service. The Appellant reported that he has a natural gas furnace in his home that does not work. The Appellant testified that it would cost him \$25,000 to convert his gas furnace to an electric heating source. The Appellant further testified that he purchased an Infrared Quartz Portable Electric Space Room Heater from Wal-Mart. The Appellant stated that he does not heat his entire home with the space heater, but only for his bedroom which is about 200 square feet. The Appellant argued that his portable electric space heater is a safe alternative heat source because it does not have wheels so

it is unable to turn over and does not burn to touch. The Appellant argued that he was never told that he would only be eligible for one (1) year of LIEAP for the use of portable space heaters and felt policy was vague regarding heating sources.

Policy for LIEAP requires that individuals establish vulnerability to heating costs as a condition of eligibility. It is noted that portable 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 exceptions/conditions must be met to approve LIEAP benefits for space heaters and require supervisory approval. The Appellant argued that with the cold temperatures at times he has an emergent life-threatening situation. The Appellant's dwelling is totally without a heating source and he has no alternate housing. The Appellant has met all three exceptions. It is at the discretion of the supervisor to approve exceptions to the policy. The Respondent erred in not approving the Appellant based on the exceptions.

### **CONCLUSIONS OF LAW**

- 1) The Appellant meets the definition of vulnerability to home heating costs as an eligibility requirement for LIEAP benefits.
- 2) The Appellant meets the three (3) exemptions outlined in policy for the utilization of a space heater as a primary heat source.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant's 2018 application for LIEAP benefits.

**ENTERED this \_\_\_\_\_ day of February 2019.**

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**Danielle C. Jarrett**  
**State Hearing Officer**