



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

November 7, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2488

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Peggy Gillespie, Department Representative

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2488

**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 September 22, 2016, on an appeal filed August 10, 2016.

The matter before the Hearing Officer arises from the Respondent's failure to inform the Appellant of the period of time in which applications for School Clothing Allowance (SCA) may be accepted. The Respondent did not accept or respond to any application for SCA from the Appellant. As such, this matter additionally addresses the denial of the Appellant's right to apply for SCA.

At the hearing, the Respondent appeared by Peggy Gillespie. The Appellant appeared *pro se*. All witnesses were sworn and neither party submitted evidence for the hearing.

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 inquired about the School Clothing Allowance (SCA) after the season for the program ended.
- 2) The Respondent did not process any application related to the Appellant's inquiry.

APPLICABLE POLICY

The West Virginia Income Maintenance Manual (WVIMM), Chapter 15, Appendix C, §A.10, details agency time limits for SCA and reads, "As long as the application is made by the last day of July and the applicant returns the requested information in the time frame specified by the Worker, the [West Virginia School Clothing Allowance] is approved, if the family is otherwise eligible."

WVIMM, Chapter 15, Appendix C, §A.13, reiterates this, stating, "Eligibility is determined for the month of July only."

WVIMM, Chapter 1, §1.2.A.1, reads, "No person is denied the right to apply for any Program administered by the Division of Family Assistance (DFA). Every person must be afforded the opportunity to apply for all Programs on the date he expresses his interest."

DISCUSSION

In response to an inquiry from the Appellant regarding SCA eligibility, the Respondent advised the Appellant orally that any SCA application outside of the established season for that program would be denied. The Appellant requested this hearing to appeal the Respondent's failure to notify her in advance when applications would be accepted for the SCA program. There is nothing to indicate the Respondent had any such burden; however, the Respondent does have a burden to accept and process SCA applications when any applicant expresses an interest.

Policy for the SCA program clearly establishes the month of July as the season for this program. Any applications submitted outside of the month of July must be denied by policy, and there was no factual dispute that the Appellant's inquiry was outside of that season and must be denied.

However, this action is not a denial because the Respondent failed to accept and process a SCA application from the Appellant – one that presumably would have been denied on the basis that it was submitted outside of the season for the program. If this fact were to shift the issue before the Board of Review from program denial to denial of the right to apply, there would also be no factual dispute that the Respondent denied the Appellant an opportunity to apply for SCA on the date she expressed her interest. If there had been any indication during the hearing that the Appellant expressed an interest in the program prior to the seasonal deadline, the Respondent would be ordered to accept and process the application they refused to consider at the time of inquiry. Unfavorable eligibility determinations that appear obvious to workers for the Department – such as a potential application that would be denied based on seasonality – do not

eliminate the Department's burden to accept and process applications when an interest is expressed.

The only action that could have been taken by the Respondent, given the facts of this case, is denial of an application from the Appellant.

CONCLUSION OF LAW

Because the Appellant inquired about the SCA program outside of the established season for that program, any application submitted in conjunction with that inquiry would have been denied.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's determination that the Appellant's untimely inquiry regarding SCA could have only resulted in a denial.

ENTERED this ____ Day of November 2016.

**Todd Thornton
State Hearing Officer**