



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 West Washington Street  
Charleston, West Virginia 25313

Joe Manchin III  
Governor

Secretary

January 24, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_;

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 28, 2003. Your hearing request was based on the Department of Health and Human Resources' action, to sanction you for not cooperating with the Food Stamp Employment and Training Program.

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 and benefit levels for Food Stamps are determined based on current regulations. One of these regulations specifies in part,

"An ABAWD must meet work requirements to be eligible. For ABAWD purposes only, work is defined as any activity performed for monetary compensation, for in-kind services, or unpaid work. All work hours must be verified, including in-kind services and unpaid work. (West Virginia Income Maintenance Manual Chapter 9.1 (A)(2)(n)(3) – *ABAWD Work Requirement*).

The information submitted at the hearing revealed: You were not notified of the requirement to participate with the Food Stamp Employment and Training Staff.

It is the decision of the State Hearing Officer, to reverse the action of the Department, to impose a sanction against your Food Stamp Benefits.

Sincerely,

Ray B. Woods, Jr., M. L. S.  
State Hearing Officer  
Member, State Board of Review

cc: State Board of Review  
Brent R. Bragg, ESW

## **WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

### **SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

#### **I. INTRODUCTION**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 24, 2005, for Mr. \_\_\_\_\_

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 originally scheduled on May 28, 2004, on a timely appeal filed March 12, 2004.

It should be noted here that, Mr. \_\_\_\_\_'s Food Stamp Benefits were continued through the Fair Hearing process.

All persons giving testimony were placed under oath. This issue could not be resolved in a pre-hearing conference.

#### **II. PROGRAM PURPOSE**

The program entitled Food Stamps is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

The purpose of the Food Stamp 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 food coupons to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

#### **III. PARTICIPANTS**

\_\_\_\_\_, Claimant  
Brent R. Bragg, Income Maintenance Worker - Raleigh District DHHR Office

Presiding at the hearing was, Ray B. Woods, Jr., M. L. S., State Hearing Officer and; A member of the State Board of Review.

#### **IV. QUESTION(S) TO BE DECIDED**

Did Mr. \_\_\_\_\_ receive proper notification about his Food Stamp Employment and Training appointment?

#### **V. APPLICABLE POLICY**

West Virginia Income Maintenance Manual Chapter 9.1 (A)(2)(n)(3) – *ABAWD Work Requirement*; West Virginia Income Maintenance Manual Chapter 9.1 (A)(2)(n)(4) – *Issuance Limited Counties (ILC) and Non-Issuance Limited Counties (NILC)*; West Virginia Income Maintenance Manual Chapter 25.2 (A) *Income Maintenance Worker Responsibilities* and; Opal June Miller Amended Consent Decree 2(a) - (b) (1-3), page 9.

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

- D-1 Hearing/Grievance Information (IG-BR-29)
- D-2 Hearing Request (IM-FH-1) dated 01/20/04
- D-3 E-mail to State Hearing Officer from Mr. Bragg dated 03/02/04 re: Hearing Request
- D-4 E-mail from State Hearing Officer to Mr. Bragg dated 04/26/04 re: Date of Hearing
- D-5 Non-Financial Eligibility Determination Printout
- D-6 E-mail from FSE&T Worker to Mr. Bragg dated 03/03/04 re: Client registering
- D-7 Enrollment Verification
- D-8 Letter from Mr. Bragg to Mr. \_\_\_\_\_ dated 02/11/04 re: Food Stamp Case Closure
- D-9 Letter from Mr. Bragg to Mr. \_\_\_\_\_ dated 02/23/04 re: Referral to Work Programs
- D-10 Letter from Mr. Bragg to Mr. \_\_\_\_\_ dated 02/23/04 re: Amount of Food Stamps
- D-11 Notice/Letter History Summary
- D-12 WVIMM 13.2 General Food Stamp Work Requirements and Exemptions
- D-13 WVIMM 9.1(A)(2)(n)(3) – ABAWD Work Requirement
- D-14 West Virginia Income Maintenance Manual Chapter 25.2 (A) *Income Maintenance Worker Responsibilities*
- D-15 Excerpt from \_\_\_\_\_ Amended Consent Decree 2(a) - (b) (1-3), page 9
- D-16 Summary
- D-17 Scheduling Notice dated 03/12/04

#### **VII. FINDINGS OF FACT**

- Mr. \_\_\_\_\_ was in the office on February 20, 2004 for his Food Stamp review. At that time it was discovered that his food stamps were failing out. This was due to \_\_\_\_\_ County becoming a non exempt ABAWD (Able Bodied Adult Without Dependents) County. After receiving benefits for three (3) months (October, November and December, 2003), the Client was mandatory to meet the requirements of the ABAWD policy. The case was sanctioned by the Food Stamp Employment and Training Worker for failing to attend a scheduled appointment.
- Mr. Bragg could not locate any evidence that Mr. \_\_\_\_\_ was notified of the requirements of the ABAWD policy. This apparently happened to several individuals. Mr. \_\_\_\_\_ was encouraged to request a fair hearing. Food Stamp Benefits were restored through the fair hearing process.

- The Food Stamp Employment and Training Worker is a contracted employee.
- If the Department is upheld, Mr. \_\_\_\_\_ will owe a repayment of Food Stamp Benefits received from January, 2004 through the present.
- Mr. \_\_\_\_\_ met with the Food Stamp Employment and Training Worker on March 17, 2004. Mr. Bragg was notified of Mr. \_\_\_\_\_'s cooperation on March 20, 2004.
- A decision was rendered at the conclusion of the Fair Hearing.

## VIII. CONCLUSIONS OF LAW

### **West Virginia Income Maintenance Manual Chapter 9.1 (A)(2)(n)(3) – ABAWD Work Requirement:**

An ABAWD must meet work requirements to be eligible. For ABAWD purposes only, work is defined as any activity performed for monetary compensation, for in-kind services, or unpaid work. All work hours must be verified, including in-kind services and unpaid work. See Section 4.2,E. As long as an ABAWD is exempt as found in item (2) above or meets either of the 2 requirements below, he may receive Food Stamps, if otherwise eligible. Otherwise, he is ineligible once he has received Food Stamps for 3 months without being exempt or meeting the work requirement. The 3 months need not be consecutive and includes Food Stamp benefits received from another state. The work requirement is met by either:

- Working at least 20 hours per week, averaged monthly; or
- Participating in a work program such as, but not limited to, WIA, FSE&T, or a refugee resettlement program, at least 20 hours per week, averaged monthly.

This does not include job search or job search training as part of a work program.

Months in which the client received prorated benefits do not count toward the 3-month limit. In addition, when circumstances change so that an ILC ABAWD, who has been exempt or meeting the requirement is no longer exempt or meeting the requirement, the month in which the change occurs is not counted toward the 3-month limit. This is true even if he has already received a full month's issuance for that month.

**EXAMPLE:** An ABAWD who works 25 hours per week loses his job the second week of February. February is not counted toward his 3-month limit.

**EXAMPLE:** An ABAWD applies on January 15 and is approved for a prorated allotment. January is not counted toward his 3-month limit;

### **West Virginia Income Maintenance Manual Chapter 9.1 (A)(2)(n)(4) – Issuance Limited Counties (ILC) and Non-Issuance Limited Counties (NILC):**

The following are ILC counties and the only ones in which the 3-month limit applies.

Berkeley	Monongalia
Cabell	Morgan

Hampshire  
Harrison  
Jefferson  
Kanawha  
Marion  
Mercer

Ohio  
Preston  
Raleigh  
Wayne  
Wood

All other counties are Non-Issuance Limited Counties (NILC) or are treated as such.

**NOTE:** When an NILC becomes an ILC, the first month of the client's 3-month limit is the month in which the county becomes an ILC;

**West Virginia Income Maintenance Manual Chapter 25.2 (A) *Income Maintenance Worker Responsibilities:***

To operate the FSE&T Program, the Income Maintenance Worker and the contract staff (Contract FSE&T Worker) are responsible for duties as outlined in this section. Referrals are made on a daily basis via RAPIDS. The focus of the Contract FSE&T Worker is on providing non-exempt ABAWDS with opportunities to meet the work requirement. However, They may work with other mandatory and volunteer Food Stamp recipients who request to participate and who are referred to them by an Income Maintenance Worker.

**A. INCOME MAINTENANCE WORKER RESPONSIBILITIES**

The Income maintenance worker is responsible for:

- Processing Food Stamp applications and determining eligibility
- Management of the Food Stamp case.
- Determining work registration exemptions.
- Making decision on determination of exemption from participation after recommendation from the Contract FSE&T Staff.
- Informing those exempt from registration that it is possible to volunteer for FSE&T.
- Data system coding to initiate the referral to the Contract FSE&T Staff.
- Referring exempt ABAWDS and other mandatory BEP registrants to BEP.
- Determination of failure to comply with FSE&T requirements and good cause, if applicable, and all required notifications.
- Representing the Department in Hearings, documentation, Pre-hearing Conferences and providing testimony and;

**Opal June Miller Amended Consent Decree, Entered October 26, 1987 2(a) - (b) (1-3), page 9** states,

(a) The Defendant, Commissioner of the West Virginia Department of Human Services, her officers, employees, agents, and all persons acting by, through, and under them, shall in all cases provide

timely and adequate notice of reduction, termination, or denial; of assistance benefits, including, but not limited to: (a) timely notice, received by the claimant or recipient not less than ten (10) days prior to the effective date of adverse action; and (b) adequate notice simplified in form comprehensible to the average person, which notice shall clearly state: (1) the proposed action; (2) the reasons for the action taken; (3) specific citations to applicable policy manual sections.

## **IX. DECISION**

According to Mr. Bragg's testimony, there was no documentation in the case record that Mr. \_\_\_\_\_ was notified of an appointment with the Food Stamp Employment and Training Staff, before a sanction was requested on his benefits. The sanction was requested by a contracted FSE&T Worker.

The Worker who failed to notify Mr. \_\_\_\_\_, in writing, of his requirement to participate, violated the terms outlined in the Opal June Miller Amended Consent Decree, Entered October 26, 1987 2(a) - (b) (1-3), page 9 which states,

(a) The Defendant, Commissioner of the West Virginia Department of Human Services, her officers, employees, agents, and all persons acting by, through, and under them, shall in all cases provide timely and adequate notice of reduction, termination, or denial; of assistance benefits, including, but not limited to: (a) timely notice, received by the claimant or recipient not less than ten (10) days prior to the effective date of adverse action; and (b) adequate notice simplified in form comprehensible to the average person, which notice shall clearly state: (1) the proposed action; (2) the reasons for the action taken; (3) specific citations to applicable policy manual sections.

It is the decision of this State Hearing Officer, to reverse the action of the Department to impose a sanction, for not cooperating with the Food Stamp Employment and Training Program.

## **X. RIGHT OF APPEAL**

See Attachment.

## **XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.