



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

January 31, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 20, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to close your Food Stamp case effective January 2005.

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 the Food Stamp Program is based on current policy and regulations. Some of these regulations state as follows: An Able- Bodied Adult must meet work requirements to be eligible and penalty is imposed when the individual does not comply with work requirements, (Policy § 9.1 & 13.6). The information which was submitted at the hearing revealed that you had failed to comply with Food Stamp Work Requirements and the Agency was applying a Third sanction to your case for this failure to comply.

It is the decision of the State Hearing Officer to uphold the proposal of the Agency to apply the Third Sanction which would close your one person household Food Stamp case.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

CC: Chairman, Board of Review
DHHR, Stephanie Smith

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

January 31, 2005

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 20, 2005 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 January 20, 2005 on a timely appeal filed December 22, 2004.

It should be noted here that benefits under the Food Stamp Program have continued.

All persons giving testimony were placed under oath.

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

Stephanie smith, Agency Representative

Presiding at the hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED

The question to be decided is whether the Agency was correct in their proposal to close a one person Food Stamp case due to the Third incident of non compliance with Work Requirements.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 9.1;13.2; 13.5; 13.6 and 25.3, D
7 CFR § 273.10 - Code of Federal Regulations.

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VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Exhibit -D1	Food Stamp Employment & Training (FSE&T) – Personal Responsibility Plan (PRP)
Exhibit -D2	FSE&T Case Recording Log, 3/29/04 thru 12/15/04
Exhibit -D3	FSE&T Time sheet for April 2004
Exhibit -D4	FSE&T Time sheet for August 2004
Exhibit -D5	Notice of proposed Food Stamp closure
Exhibit -D6	Case Comments 3/23/04 thru 3/25/04
Exhibit -D7	WV Income Maintenance Manual policy §13.6

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

1. This Claimant had been advised by his DHHR case worker on March 23, 2004 that since there had already been two FSE&T penalties applied to his Food Stamp case, if one more penalty was applied, he would not be eligible for his Food Stamps.
2. Mr. _____ made a reapplication for Food Stamps on March 25, 2004.
3. The FSE&T worker and the claimant completed an updated Personal Responsibility Plan, (PRP), on March 29, 2004. This PRP stipulated that one of Mr. _____'s assignments was to provide monthly timesheets by the 5th of each month documenting Community Service work activities for the previous month. This PRP also advised the claimant of the penalties which would be applied if he did not comply with his responsibilities.
4. Mr. _____ testified that on December 2, 2004 he called his FSE&T worker to advise her that he did not have any time sheets to record his work hours. He stated that his worker said that she would send him some sheets. FSE&T Case Recording Log made no mention of the December 2, 2004 phone call. The only notation identified in December, prior to the 17th, was on December 15, 2004. This notation was the advisement to DHHR of adverse action warranted due to no time sheet received for November.
5. Mr. _____ made a visit to the DHHR office during the week of December 6, 2004 for an unrelated issue and again on December 17, 2004, with a utility shut off notice to apply for Emergency benefits under the Low Income Energy Assistance Program, (LIEAP).
6. It was during the December 17, 2004 visit, that he became aware that his case was to be placed in a Third penalty for non compliance. His notice had been mailed on December 16, 2004. He left the DHHR office on the 17th and went to a pay phone and called his FSE&T worker. He asked if there was any way that the penalty could be stopped since he had no Time Sheet forms to complete. She advised him that it was too late.
7. The claimant admits that he had waited 15 days from his December 2nd phone call to FSE&T and until he was made aware of the application of a Third penalty before trying to contact his FSE&T worker again.
8. The claimant was sent a letter on December 16, 2004 advising of this proposed penalty and the resulting closure of his Food Stamp case. The notice prompted his request for a Fair Hearing.
9. **West Virginia Income Maintenance Manual § 9.1:**
An individual who meets the definition of an ABAWD can only receive AG benefits when he is otherwise eligible and: - Is meeting the work requirements; or
 - Is residing in a Non-Issuance Limited County; or
 - Regains eligibility after meeting the ABAWD work requirement, becoming exempt, or moving to a Non-Issuance Limited County; or
 - Is in the first or second 3-month limit period while not meeting the work requirement or being exempt.

Definition of ABAWD – An Able-Bodied Adult Without Dependents. An ABAWD is any individual age 18 or over, but not yet age 50.

ABAWD Work Requirement – An ABAWD must meet work requirements to be eligible. All work hours must be verified, including in-kind services and unpaid work.

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VII. Section Continued:

10. West Virginia Income Maintenance Manual § 13.2:

Food Stamp Work Requirements for Non-WV Works Recipients - Cooperation with FSE&T. Failure to cooperate after referral to Work Program, results in application of a penalty for failure to meet the work requirement.

11. West Virginia Income Maintenance Manual § 13.5:

All individuals must register with BEP for employment at time of the original application, unless referred to FSE&T. If the client agrees to be referred to FSE&T the registration requirement is met by this agreement.

12. West Virginia Income Maintenance Manual § 13.6:

A Food Stamp penalty is imposed when the individuals do not comply with a work requirements.

First violation: The individual is removed from the AG for a minimum of 3 months.

Second violation: The individual is removed from the AG for a minimum of 3 months.

Third violation: The individual is removed from the AG and is not eligible for Food Stamps, either as a Separate AG or as a member of another AG, unless he reports a change that makes him exempt.

13. West Virginia Income Maintenance Manual § 25.3,D:

FSE&T ACTIVITIES – D. Community Services Program is for non-exempt ABAWD Food Stamp recipients only.

VIII. DECISION:

Policy is clear that Mr. _____ is an Able Bodied Adult Without Dependents (ABAWD), and is not eligible to receive food stamp benefits if he is not meeting the work requirements. He had already received his allowable months of exempt ABAWD benefits. Also clear, is the penalties that must be imposed if work requirements are not met.

Mr. _____ was made aware of the possibility of imposed penalties at the signing of his PRP and since two penalties had already been applied to his Food Stamp case. His DHHR case worker had warned him of what a Third penalty would do to his case. During the month of November, when he was to be logging his work activity hours on a time sheet, he did not have the proper form for which to log these hours. Instead of contacting his FSE&T worker early in the month to obtain the needed form, he states that he waited until three days before the deadline to turn in the time sheet, before calling his worker. This telephone contact was not documented on the FSE&T workers Recording Log. He then waited another 15 days and until he was made aware that a Third penalty was being applied, before contacting his FSE&T worker again. During those 15 days, he had made two visits to the DHHR office about additional services, but no contact with his FSE&T worker about his time sheet obligation.

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **uphold** the Agency's proposed action to close Mr. _____'s Food Stamp case. The claimant clearly did not comply with an FSE&T obligation as an Able Bodied Adult Without Dependents.

IX. RIGHT OF APPEAL

See Attachment

X. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29