

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
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 April 26, 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 April 26, 2005 on a timely appeal, filed February 23, 2005.

It should be noted here that the claimant's benefits have been denied.

**II. PROGRAM PURPOSE:**

The Program entitled Food Stamps is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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

\_\_\_\_\_, Claimant's Mother

Katherine Lawrence, Department Hearing Representative

**IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the claimant meets the Food Stamp Employment and Training (FSE&T) requirements needed in order to be eligible for food stamps.

**V. APPLICABLE POLICY:**

**Section 13.2 of the West Virginia Income Maintenance Manual reads in part:**

The following are the work requirements for non-WV WORKS recipients:

Cooperation with FSE&T. FSE&T requirements are met for applicants who agree to cooperate with FSE&T. Failure to agree results in ineligibility of the individual until he complies or reports a change which makes him exempt. Failure to cooperate after referral to WP, results in application of a penalty for failure to meet the work requirement. This is not a requirement for those who live in counties where FSE&T is not operational. If FSE&T is not operational in the client's county of residence, the client must register with BEP.

Registration with BEP. Failure to register prior to approval results in ineligibility of the individual until he complies or reports a change which makes him exempt, unless the application is subject to expedited services. Failure of a recipient to register each 12 months results in application of a penalty for not meeting a work requirement. This is not a requirement for those who are referred to FSE&T.

Providing Information about Employment Status and Job Availability. Refusal to provide this information results in ineligibility for the non-exempt individual. The applicant who fails to provide such information is ineligible until the information is provided or he reports a change that makes him exempt. A recipient's failure to supply this information results in application of a penalty for failure to provide information about employment and job availability.

**Section 13.6 of the West Virginia Income Maintenance Manual reads in part:**

A Food Stamp penalty is imposed when the individual s listed below do not comply with a work requirement and do not have good cause.

A non-WV WORKS recipient who does not comply with the Food Stamp work requirements in Section 13.2 – 13.5.

Penalties are:

First violation: The individual is removed from the AG for a minimum of 3 months. If non-compliance continues, the penalty continues until the failure or refusal stops, or until the individual reports a change that makes him exempt according to Section 13.2.A.1 for some reason other than UCI-related activities.

Second Violation: The individual is removed from the AG for a minimum of 3 additional months. If non-compliance continues, the penalty continues until the failure or refusal stops, or until the individual reports a change that makes him exempt according to Section 13.2.A.1 for some reason other than UCI-related activities.

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 according to Section 13.2.A.1 for some reason other than UCI-related activities.

**NOTE:** The minimum penalty must be served unless the client reports an exemption. The penalty is never applied to an entire AG. Only to the individual who does not comply.

**NOTE:** Penalties are applied sequentially, regardless of the requirement not met. In addition, penalties are applied consecutively and one penalty must end before another one is imposed.

**7 CFR • 273.7 Work Provisions reads in part:**

- (a) Work requirements. (1) As a condition of eligibility for food stamps, each household member not exempt under paragraph (b)(1) of this section must comply with the following Food Stamp Program work requirements:
- (i) Register for work or be registered by the State agency at the time of application and every 12 months after initial registration. The member required to register need not complete the registration form.
  - (ii) Participate in a Food Stamp Employment and Training (E&T) program if assigned by the State agency, to the extent required by the State agency;
  - (iii) Participate in a workfare program if assigned by the State agency;
  - (iv) Provide the State agency or its designee with sufficient information regarding employment status or availability for work;
  - (v) Report to an employer to whom referred by the State agency or its designee if the potential employment meets the suitability requirements described in paragraph (h) of this section;
  - (vi) Accept a bona fide offer of suitable employment, as defined in paragraph (h) of this section, at a site or plant not subject to a strike or lockout, at a wage equal to the higher of the Federal or State minimum wage or 80 percent of the wage that would have governed had the minimum hourly rate under section 6(a)(1) of the Fair Labor Standards Act been applicable to the offer of employment.
  - (vii) Do not voluntarily and without good cause quit a job of 30 or more hours a week or reduce work effort to less than 30 hours a week, in accordance with paragraph (j) of this section.

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

Department' Exhibits:

Exhibit D-1) Department's Summary

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Exhibit D-2) Copy of IG-BR-40, Hearing Appointment Notice, dated 03/09/05  
 Exhibit D-3) Copy of IG-BR-29, Hearing/Grievance Record Information  
 Exhibit D-4) Copy of hearing request received in office 02/23/05  
 Exhibit D-5) Copy of Combined Application and Review Form dated 02/16/05  
 Exhibit D-6) Copy of OFS-RR-1, Rights & Responsibilities , dated 02/16/05  
 Exhibit D-7) Copy of work program referral notice dated 11/30/05  
 Exhibit D-8) Copy of Sanction Notification dated 08/12/04  
 Exhibit D-9) Copy of denial letter dated 02/17/05  
 Exhibit D-10) Copy of letter advising client to provide doctor's statement  
 Exhibit D-11) Copy of Case Comments  
 Exhibit D-12) Copy of Income Maintenance Sections 1.4S, 13.2 – 13.6i

## VII. FINDINGS OF FACT:

- 1) The claimant was notified in a letter dated 02/17/05 that his 02/16/05 application for food stamps had been denied. Reason: The county that you reside in has time limited eligibility for food stamps. \_\_\_\_\_ – Individual failed to comply with Food Stamp Employment and Training. Able Bodied Adult has received Food Stamps for the first three month period without meeting the work requirement or being exempt. (Exhibit D-9)
- 2) The claimant's hearing request on this issue was received 02/23/05.
- 3) The claimant was advised on 02/16/05 of the following: Effective 09/04 a sanction was placed on your case for failure to cooperate with the Food Stamp Employment and Training Program. In order to regain eligibility for food stamps, you must either comply with the Employment and Training worker for 30 days, work 80 hours in a 30 day period, or meet one of the other exemptions listed on the handout you were given. You have stated you are unable to work at this time. In order to exempt you from the FSE&T Program, you must provide a doctor's statement that you are not able to work at this time and how long you are expected to be unable to work. Once this is provided, we can reevaluate you eligibility for food stamps. (Exhibit D-10)
- 4) The claimant was notified of the work requirement penalty in a letter dated 08/12/04. It reads in part: This is penalty number 1. \_\_\_\_\_ will remain ineligible for Food Stamps for 3 months or until compliance, whichever is longer. (Exhibit D-8)
- 5) The claimant contends he is physically unable to work. No documentation has been provided to the Department. The worker he was seeing for FSE&T is no longer there. He called to report he had gone back to work and no longer needed assistance. He worked in construction from August, 2004 and last worked in November, 2004. He wasn't able to work because of two slipped discs in his

back. He completed everything he was asked to do prior to going to work in August, 2004.

- 6) A review of case comments does not reveal the claimant's employment in 08/04 was reported or cooperation with FSE&T documented.(Exhibit D-11)

#### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy states that FSE&T requirements are met for applicants who agree to cooperate with FSE&T. Failure to cooperate after referral results in application of a penalty for failure to meet the work requirement. Penalty for the first violation is that individual is removed from the AG for a minimum of three (3) months. If the noncompliance continues, the penalty continues until the failure or refusal stops, or until the individual reports a change that makes him exempt for some reason other than UCI-related activities. i
- 2) The preponderance of evidence and testimony presented during the hearing demonstrates the claimant has not provided any information to the Department to show he cooperated with FSE&T nor any documentation which would exempt him from the work requirements.

#### **IX. DECISION:**

Based on evidence and testimony provided during the hearing, it is the finding of the State Hearing Officer that the Agency followed appropriate policy and procedures in the decision to deny the claimant's application for food stamps as the claimant failed to comply with FSE&T requirements nor did he provide any documentation to show he is exempt from the work requirements. The Agency is upheld in the decision to deny the claimant's application for food stamps.

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29