



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton, WV 26354**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

July 13, 2005

Dear Mr. & Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 8, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal of a Food Stamp penalty.

In arriving at a decision, the State Hearings 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: A Food Stamp penalty is imposed when individuals do not comply with work requirements. 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 her exempt. (West Virginia Income Maintenance Manual section 13.6)

The information which was submitted at your hearing revealed that a required BEP application was not returned in a timely manner. The agency proposed a penalty for May, June and July 2005.

It is the decision of the State Hearings Officer to uphold the proposal of the Agency to apply a Food Stamp penalty for the months of May, June and July 2005.

Sincerely,

Ron Anglin
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Susan Hinzman, ESS

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

_____ and _____,

Claimant,

v.

Action Number: _____

West Virginia Department of Health and Human Resources,

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on July 12, 2005 for _____ and _____. 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 June 8, 2005 on a timely appeal, filed May 5, 2005.

It should be noted here that the claimant's benefits have been continued at the previous level pending a hearing decision.

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 EBT benefits 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

Susan Hinzman, ESS

Presiding at the Hearing was Ron Anglin, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the claimants complied with Food Stamp policy and should a penalty be applied?

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 13.2, 13.5 and 3.6
7 CFR § 273 Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

D-1- Notification (information request), 3/29/05
D-2- Application for Employment Services
D-3- Notifications (case review) 3/21/05 and 4/18/05
D-4- Notification (closure) 4/14/05
D-5- Notification (information request) 4/22/05
D-6- Notification (Approval) 4/29/05
D-7- WVIMM Policy 13.2- 13.6

VII. FINDINGS OF FACT:

- 1) On 4/29/05 the claimants were notified that _____ would not be included in the Food Stamp group based on her failure to register with the Bureau of Employment Programs (BEP). The claimants requested a hearing May 5, 2005.
- 2) A hearing was scheduled for and held 6/8/05.
- 3) Documents as listed in section VI above were accepted.
- 4) Testimony was heard for the participants named in section III above.
- 5) The claimants were informed in a notification dated 3/29/05 that _____ would need to register with BEP by 4/9/05 to continue eligibility.

6) The BEP registration was not returned by 4/9, however because the case was due for review 4/11 (rescheduled to 4/22) no case action was taken.

7) A case review was completed 4/22 and an information request (ES-6) was issued with a BEP application for _____ to be returned by 4/29/05.

8) A penalty was applied 4/29/05 effective 5/05 when the BEP application was not returned by the claimants.

9) The BEP application was returned 5/4/05 but the penalty was already in place. The penalty is applied for May, June and July 2005.

10) The claimants believe they mailed the BEP form on 5/2/05 and didn't understand that their case would be reduced.

11) West Virginia Income Maintenance Manual section 6.3 A states in part: If, at redetermination, or the time of any other change in client circumstances, it becomes clear that further information or verification is needed, the ES-6 is used to notify the client in writing of the needed information and the date by which the information must be received. Food Stamp Redeterminations - The date entered must be at least 10 days from the date of the ES-6. If the information is not available by the date indicated, and the client has not contacted the Worker, the case is closed or the deduction disallowed.

12) West Virginia Income Maintenance Manual section 13.2 states in part: Work Requirements- If FSE&T is not operational in the client's county of residence; the client must register 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. Failure of a recipient to register each 12 months results in application of a penalty for not meeting the work requirement.

13) West Virginia Income Maintenance Manual section 13.6 states in part: A Food Stamp penalty is imposed when individuals do not comply with work requirements. 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.

VIII. CONCLUSIONS OF LAW:

1) Agency policy (6.3) holds that if additional information is required at the time of redetermination, form ES-6 will be utilized. If requested information is not returned within the specified period, action proposed by the agency is taken. Required information requested by the agency on April 22 was not received by the agency until May 4 - two days after the designated period had expired.

2) Agency policy (13.2) sets forth work requirements for the Food Stamp Program. One of these directs that in specific counties a non-exempt recipient must complete a BEP registration and failure to comply results in a penalty. The penalty (13.6) for first violation entails removal of the recipient from the Food Stamp group for a minimum of 3 months. The claimants did not establish good cause for their failure to provide the required registration in a timely manner. Thusly, imposition of the penalty is supported.

IX. DECISION:

Based on evidence presented during the hearing and applicable policy and regulations, the agency's proposal to apply a penalty for the period May through July 2005 is **upheld**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th Day of July, 2005.

**Ron Anglin
State Hearing Officer**