



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 24, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 26, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny a food replacement, due to a lack of verification

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:

In cases when food purchased with Food Stamp benefits is destroyed in a household misfortune or disaster, the Assistance Group (AG) will be eligible for replacement of the actual value of the loss, not to exceed one month's allotment if: The AG's misfortune or disaster is verified. (West Virginia Income Maintenance Manual Section 21.2 A (4) (a) Destroyed Food – Replacement Procedures (02/05)).

The information submitted at your hearing revealed: The power outage was verified and you are entitled to a food replacement in the amount of \$108.53.

It is the decision of the State Hearings Officer to REVERSE the ACTION of the Department to deny a food replacement due to a verified disaster.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Sylvia Proffitt, ESW

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

_____ ,

Claimant,

v.

Action Number: _____

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on October 24, 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 August 26, 2005 on a timely appeal filed July 18, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision. A pre-hearing conference was held between the parties prior to the hearing. Ms. _____ did not have legal representation.

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

_____, Neighbor
Sylvia Proffitt, Economic Services Worker – [REDACTED] 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. QUESTIONS TO BE DECIDED:

The question(s) to be decided: Is Ms. _____ eligible for a food replacement?

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 21.2 A (4) (a) Destroyed Food – Replacement Procedures (02/05).

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Denial of Food Replacement dated 07/08/05
- D-2 AEP verification of power outage dated 07/07/05
- D-3 WVIMM Section 21.2 (A) - Destroyed Food
- D-4 Application for Food Replacement dated 07/05/05 with attached verifications
- D-5 Case Comments 06/02/05 – 08/04/05
- D-6 Case Summary
- D-7 IG-BR-40 dated 07/18/05

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1) West Virginia Income Maintenance Manual Section 21.2 A (4) (a) Destroyed Food – Replacement Procedures (02/05) states:

This is the only situation in which Food Stamp benefits issued by EBT are replaced.

a. Replacement Procedures

In cases when food purchased with Food Stamp benefits is destroyed in a household misfortune or disaster, the AG will be eligible for replacement of the actual value of the loss, not to exceed one month's allotment if:

- The loss is reported within ten (10) days of the incident; and

- The AG's misfortune or disaster is verified; and
- The DFA-FS-36 is completed and signed within ten (10) days of the report of the loss.

The misfortune or disaster may be an individual household misfortune or disaster such as fire, as well as natural disasters affecting more than one household. The replacement must be received within two (2) days of the receipt of the completed and signed DFA-FS-36.

The Worker replaces the value of the food using the appropriate RAPIDS procedure. The original DFA-FS-36 is retained in the case record.

2) This issue involves the denial of a replacement of Food Stamp benefits, lost as a result of a power failure. The Department denied the replacement because the Client failed to provide requested verification. The policy used by the Department in their denial is found at West Virginia Income Maintenance Manual Section 21.2 A (4) (a) Destroyed Food – Replacement Procedures (02/05) which states in part:

“In cases when food purchased with Food Stamp benefits is destroyed in a household misfortune or disaster, the AG will be eligible for replacement of the actual value of the loss, not to exceed one month's allotment if - The AG's misfortune or disaster is verified.”

3) Ms. _____ contacted the Department on June 8, 2005 regarding the power outage and, the loss of food. Ms. Sylvia Proffitt, Economic Services Worker, advised Ms. _____ that she would need to provide verification from the Power Company of the outage and, a list of items lost with their monetary value. Ms. _____ was advised to come to the office for assistance with replacement.

On July 1, 2005, Ms. _____ called about the power outage and discussed the matter with another Case Worker. Ms. _____ was advised after consultation with the Supervisor that, she had been given incorrect information. Ms. _____ would need two (2) statements from witnesses; verification from Power Company and; a list of items lost and their costs.

Ms. _____ called the Department on July 5, 2005 and stated she had been unsuccessful in her attempts to obtain verification for the Power Company. Ms. _____ was advised to come to the office and the Department would try to obtain a verbal verification of the outage. It should be noted that Ms. _____'s electric costs are included in her monthly rent. Ms. _____ arrived at the Department later in the day and provided statements from two witnesses. In addition, she provided a detailed list of lost food items at a cost of \$108.93, including tax.

Ms. Proffitt called the Power Company and was informed that they were waiting on verification from their office that verifies power outages. The information would be sent to Ms. _____ and faxed to the local DHHR. The 'Hearsay Rule' was explained to Ms. _____ regarding any statements made by an employee of the power company who were not present for cross-examination. Ms. _____ objected and the statements referred to by the Department will not be considered in the decision.

The Department received a fax on July 8, 2005 from American Electric Power verifying the power outage. According to the fax, “Service had been interrupted for twenty –one hours and three minutes on June 7, 2005.” The Department denied the request for a replacement based

upon the lack of verification from the Power Company within ten days of the initial contact on June 9, 2005. Ms. Proffitt was advised by her Supervisor that the replacement request should be denied based upon the fax from the American Electric Power.

VIII. CONCLUSIONS OF LAW:

1) In cases when food purchased with Food Stamp benefits is destroyed in a household misfortune or disaster, the AG will be eligible for replacement of the actual value of the loss, not to exceed one month's allotment if:

- The loss is reported within ten (10) days of the incident - Ms. _____ reported to the Department on June 8, 2005 of a power outage;
- The AG's misfortune or disaster is verified – The disaster (power outage) was verified by the American Electric Power Company on July 8, 2005 and finally;
- The DFA-FS-36 is completed and signed within ten (10) days of the report of the loss – Ms. _____ was advised to come to the Office when she received verification of the power outage and a detailed list of the foods and their respective costs.

2) The Department could not verify that Ms. _____ attempted to report the power outage and/or receive verification earlier than July 1, 2005.

3) Ms. _____ verified the loss of food items at a listed value of \$108.53, including sales taxes.

IX. DECISION:

It is the decision of this State Hearing Officer to REVERSE the Department's Action in this particular matter. The Department will issue a replacement of food items valued at \$108.53 upon receipt of this decision.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 24th Day of October, 2005.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer