



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
October 20, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 31, 2005. Your hearing request was based on the Department of Health and Human Resources' denial of your July 6, 2005 Food Stamp application.

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 the work requirement and do not have good cause. For a third Violation, the individual is removed from the assistance group and is not again eligible until that person becomes exempt. (WV Income Maintenance Manual §13.6). A household shall be allowed to request a hearing on any action by the State agency or loss of benefits, which occurred in the prior 90 days. (Code of Federal Regulations- 7 CFR § 273.15)

The information which was submitted at your hearing revealed that you were notified February 2005 that a 3rd sanction had been applied to your Food Stamp eligibility and you did not request a hearing within the mandated 90 day period following that action. Therefore, that issue may no longer be addressed in an administrative hearing.

It is the decision of the State Hearings Officer to **uphold** the Agency's denial of your July 7, 2005 Food Stamp application as the penalty invoked February 2005 must stand.

Sincerely,

Ron Anglin
State Hearing Officer
Member, State Board of Review

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

**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 STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on October 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 August 31, 2005 on a timely appeal filed July 15, 2005.

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

_____, mother to 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 agency was correct in denial of the claimant's July 2005 Food Stamp application?

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 13.2-13.5 and 25.3
7 CFR § 273.15 (g) Code of Federal Regulations
DHHR Common Chapters § 770 B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

D-1- RAPIDS screen and notification 3/31/00 (1st sanction).
D-2- RAPIDS screen and notification 6/16/04 (2nd sanction).
D-3- RAPIDS screen and notification 2/10/05 (3rd sanction).
D-4- RAPID comments 10/05/04
D-5- Notification (denial) 7/7/05
D-6- WVIMM Policy 13.2- 13.6 & 25.3
D-7- Notification (closure) 2/14/05

VII. FINDINGS OF FACT:

- 1) The claimant applied for Food Stamps July 6, 2005. This application was denied by the agency July 7 based on a third sanction having been applied February 2005 in ██████████ County. The agency notified the claimant in notification mailed July 7, 2005.
- 2) The claimant requested a hearing in a request received by the agency July 15, 2005. A hearing was scheduled for and held August 31, 2005.
- 3) Documents as listed in section VI above were accepted.
- 4) Testimony was heard for the participants named in section III above.
- 5) Exhibits D-1, D-2 and D-3 reveal that Food Stamp sanctions were applied effective May 2000, July 2004 and March 2005 and the claimant was provided notification thereof.

- 6) Exhibit D-3, Notification of 2/14/05 states in part:
A Food Stamp work penalty has been applied to _____.
The reason for this penalty is because of FAILURE TO COMPLY W/FSE&T.
This is penalty number 3
_____ will remain ineligible for Food Stamps PERMANENTLY
If you do not agree with this decision, you may ask for a Fair Hearing and/or a Pre-Hearing Conference. You must ask for this Hearing and/or Conference within 90 days.
- 7) Code of Federal Regulations 7 CFR § 273.15 (g) states in part:
A household shall be allowed to request a hearing on any action by the State agency or loss of benefits, which occurred in the prior 90 days.
- 8) DHHR Common Chapters Manual § 770 B states in part: If the client or recipient of services requests a hearing after the action, it shall be granted providing he/she requests it within 90 days from the effective date of the action.
- 9) WV Income Maintenance Manual §13.6 states in part: A Food Stamp penalty is imposed when individuals do not comply with the work requirement and do not have good cause. Third Violation: the individual is removed from the AG and is not eligible unless a change is reported which makes her **exempt**.

VIII. CONCLUSIONS OF LAW:

- 1) Agency policy reveals that when an individual is found to have not complied with Food Stamp work requirements a 3rd time the penalty applied is permanent disqualification or until such individual is exempted from the program work requirements. Evidence presented reveals that a 3rd penalty was applied to the claimant February 2005.
- 2) Agency policy and Federal Regulations hold that a hearing must be requested within 90 days of notification of the action. Evidence established that the claimant was properly notified in a notification dated February 14, 2005 of the penalty to be applied and the right to a hearing if requested within 90 days. No evidence was presented to the effect that the claimant had requested a hearing within the mandated timeframe.
- 3) Policy holds that an individual that has had a 3rd penalty applied may not be determined eligible for Food Stamp benefits unless exempted for a number of specific reasons. Evidence reveals the claimant reapplied for benefits July 7, 2005 and was denied benefits as a 3rd penalty had been applied and no exemption was established.

IX. DECISION/DISCUSSION:

Based on evidence presented during the hearing and applicable policy and regulations, the agency's action in denial of the claimant's July 7, 2005 application is **upheld**.

The time limit for consideration of the 3rd penalty in an administrative hearing had expired and cannot therefore be considered here. The imposition of this penalty must therefore stand. The agency was correct in the application denial of July 7, 2005 in that a penalty was in force and no exemption to the work requirements was established.

A complete list of possible exemptions as noted in # 9 above of "Finding of Facts" (WVIMM 13.2 A, 2) is available at the local DHHR office.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

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

ENTERED this 20th Day of October 2005.

**Ron Anglin
State Hearing Examiner**