



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 31, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 26, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your Food Stamp benefits due to failure to register with the Bureau of Employment Programs.

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: Work requirements apply to all non-West Virginia Works recipients who are mentally and physically fit and over age 15, but not yet age 60 unless the individual meets an exemption to the policy. The recipient must be notified in writing of any action resulting in a change in benefits. (West Virginia Income Maintenance Manual Sections 13.2 A 1&2 and 6.1)

Information submitted at your hearing revealed that the Department correctly followed policy in proposing to remove you from the Food Stamp Assistance Group, but failed to issue proper notification concerning the proposed change in benefits.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to reduce your Food Stamp benefits.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Linda Amick, ESW, DHHR

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

Claimant,

v. Action Number: 05-BOR-6546

**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 31, 2005 for _____. The 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 October 26, 2005 on a timely appeal filed August 29, 2005.

It should be noted that benefits have continued pending the results of the hearing.

II. PROGRAM PURPOSE:

The Food Stamp Program 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's husband
Linda Amick, Economic Service Worker, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 Department proposed the correct action to reduce the Claimant's Food Stamp benefits based on failure to register with the West Virginia Bureau of Employment Programs.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 6.1, 13.2, 13.5 and 13.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 BEP referral letter dated August 18, 2005
- D-2 Hearing request form
- D-3 West Virginia Income Maintenance Manual Sections 13.2, 13.5 and 13.6

VII. FINDINGS OF FACT:

- 1) The Department conducted a peer review of the Claimant's Food Stamp case on August 18, 2005 and discovered that the Claimant, who is 44 years old, is not registered with the West Virginia Bureau of Employment Programs (BEP).
- 2) The Department sent the Claimant a BEP referral letter (D-1) on August 18, 2005 indicating that she must register with Job Service.
- 3) The Claimant failed to register and requested a hearing regarding her status as a mandatory BEP registrant. She requested continued benefits.
- 4) The Claimant testified that she does not have a driver's license and that she home-schools her 14-year-old daughter. She testified that registering with Job Service would go against her religious convictions. In addition, she stated that she has received Food Stamps for many years and has never been required to register with BEP in the past.
- 5) Ms. Amick testified that the Department did not send the Claimant written notification informing her that she would be removed from the Food Stamp benefit group as the issue was explained via telephone and the Claimant had requested continued benefits pending a hearing decision.
- 6) West Virginia Income Maintenance Manual Section 13.2 A 1&2 (D-3) states, in part:

Work requirements apply to all non-WV Works recipients who are mentally and physically fit and over age 15, but not yet age 60.

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

- Registration with BEP. Details are in Section 13.5,A. 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 the work requirement.

The following Food Stamp recipients are exempt from the Food Stamp work requirements and are not subject to a Food Stamp penalty for failure to comply.

- Those under age 16. Those who reach age 16 and lose the exemption become subject to the Food Stamp work requirements at the next redetermination, unless exempt for some other reason.
- A person age 16 or 17 who is attending school or enrolled in an employment training program on at least a half-time basis. Persons who lose this exemption become subject to the Food Stamp work requirements at the next redetermination, unless exempt for some other reason.
- Those age 60 or over.
- A parent, or other member of the AG who has the responsibility for the care of a child under the age of 6, or of an incapacitated individual. When exempt due to care of an incapacitated person, it does not matter if the person receiving the care resides with the client or not and if the incapacitated person is a member of the Food Stamp AG or not. Unborn children are not considered children under the age of 6. Separate families included in the same AG may have one person from each family exempted. Separate families, not in the same AG, but living together, may also have one person from each family exempted.
- Individuals receiving UCI, as a result of registering with BEP. This includes persons receiving benefits under the Trade Readjustment Act (TRA). If an individual's UCI benefits are suspended, he becomes subject to the Food Stamp work requirements 10 calendar days after the change is reported, unless a Food Stamp penalty is applied, or unless exempt for some other reason.
- Individuals who are physically or mentally unfit to engage in full-time employment. Should the client become able to work, he becomes subject to the Food Stamp work requirements at the next redetermination, unless

exempt for some other reason.

- Regular participants in a drug addiction or alcoholic treatment and rehabilitation program, either on a resident or non-resident basis. Any person leaving the treatment program becomes subject to the Food Stamp work requirements 10 calendar days after the change is reported, unless exempt for some other reason.

- A person enrolled at least half-time in any recognized school or recognized training program, or institution of higher education. If enrolled in an institution of higher education, he must meet one of the exceptions to the restriction on student participation listed in Chapter 9. Any person losing this exemption becomes subject to the Food Stamp work requirements at the next redetermination, unless the client is exempt for some other reason.

- Individuals who are employed or self-employed and working a minimum of 30 hours per week, or receiving weekly earnings equal to the federal minimum wage multiplied by 30 hours. When the client is employed or self-employed for at least 30 hours per week, no consideration is given to the amount earned. An employed person who is laid off, fired, goes on strike, quits or changes to employment of less than 30 hours per week, or ceases earning wages equal to the federal minimum wage multiplied by 30, becomes subject to the Food Stamp work requirements 10 calendar days after the change is reported, unless a Food Stamp penalty is applied or the client is exempt for some other reason.

- Individuals who receive WV WORKS, so long as they are subject to and complying with a WV WORKS work requirement. These individuals do not meet any of the other Food Stamp exemptions and, if they did not receive WV WORKS, would be required to meet Food Stamp work requirements. When an individual who is exempt only for this reason becomes exempt from WV WORKS work requirements, he is also considered exempt from Food Stamp work requirements.

7) West Virginia Income Maintenance Manual Section 13.5A states, in part:

All individuals must register with BEP for employment at the time of the original application, unless exempt according to Section 13.2, or unless referred to FSE&T. They must register every 12 months thereafter, regardless of the length of time that BEP considers the registration valid. The client cannot be required to register with BEP more often than every 12 months, even when the benefit is opened and closed within the 12-month period.

8) West Virginia Income Maintenance Manual Section 13.6 states, in part:

A Food Stamp penalty is imposed when the individuals 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.
- A WV WORKS recipient who is exempt from Food Stamp work requirements only because he is subject to and complying with a WV WORKS requirement in Sections 24.6 - 24.13.

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 an additional 3 months. If the non-compliance continues, the penalty continues until the failure or refusal ceases, 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.

- 9) West Virginia Income Maintenance Manual Section 6.1 states:

The applicant must be notified in writing of the action taken on his application, and the recipient must be notified in writing, and usually in advance, of any action resulting in a change in benefits. Adverse actions, other than those specified in Section 6.3, C, 2, require an advance notice period before any action is effective.

VIII. CONCLUSIONS OF LAW

- 1) The Claimant is a mandatory BEP registrant as she does not meet one of the work requirement exemptions listed in policy.
- 2) The Claimant refuses to register with Job Service as a result of religious convictions and her desire to continue providing home-school instruction to her daughter.

- 3) The Department followed policy properly in proposing to remove the Claimant from the Food Stamp Assistance Group as policy reveals no exemptions from work requirements for religious objections or home-school instruction.
- 4) The Department, however, notified the Claimant of the proposed Food Stamp decrease in a telephone conversation and failed to provide written notification of the proposed change in benefits as required by West Virginia Income Maintenance Manual Section 6.1.
- 5) The Claimant is entitled to be included in the Food Stamp benefit group until she receives proper notification of the proposed change in benefits.

IX. DECISION

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to reduce the Claimant's Food Stamp benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of October, 2005.

**Pamela L. Hinzman
State Hearing Officer**