



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

Joe Manchin III
Governor

February 25, 2005

Dear Mrs. _____

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 8, 2004. Your request was based on the Department of Health and Human Resources' proposal to, remove you from the Food Stamp Benefit Group as an "Ineligible Student."

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 and benefit levels for Food Stamps are determined based on current regulations. One of these regulations states in part,

"Students who meet one or more of the five (5) criteria are eligible to participate, provided all other eligibility factors are met." (WVIMM Section 9.1 (A)(4)(b) STUDENTS ELIGIBLE TO PARTICIPATE).

The information submitted at the hearing revealed: You do not meet the definition of an eligible student.

It is the decision of the State Hearing Officer, to uphold the proposal of the Department to deny Mrs. _____ as a student for the Food Stamp Program.

Sincerely,

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

cc: State Board of Review
James Honaker, ESW

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: _____

ADDRESS: _____

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 February 25, 2005, for Mrs. _____.

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 originally scheduled on June 14, 2004, on a timely appeal filed March 30, 2004. The hearing was rescheduled at the request of the Claimant for August 6, 2004. The State Hearing Officer rescheduled the hearing due to a family emergency. The hearing finally convened on October 8, 2004.

It should be noted here that, Mrs. _____'s Food Stamp Benefits were continued through the fair hearing process.

All persons giving testimony were placed under oath. A pre-hearing conference was not held between the parties.

II. PROGRAM PURPOSE

The programs entitled Food Stamps and SSI-Related Medical Assistance Only are set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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
James Honaker, Income Maintenance Worker - [REDACTED] District 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. QUESTION(S) TO BE DECIDED

Did the Department properly determine that Ms. ____ was an Ineligible Student for purposes of the Food Stamp Program?

V. APPLICABLE POLICY

West Virginia Income Maintenance Manual Section 2.2 D TYPES OF CHANGES; WVIMM Section 9.1 (A)(4)(b) STUDENTS ELIGIBLE TO PARTICIPATE; WVIMM Section 9.1 (A)(4)(d) DEFINITION OF ENROLLMENT AND PARTICIPATION and; WVIMM Section 10.4 FOOD STAMP PROGRAM.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

- D-1 Department Summary
- D-2 Copy of IM-FH-1 Fair Hearing and/or Conference Request Form dated 01/28/04
- D-3 Copy of IG-BR-29
- D-4 Copy of IG-BR-40 dated 03/30/04
- D-5 Copy of Combined Application and Review Form dated 11/10/03
- D-6 Copy of OFS-RR1 dated 11/10/03
- D-7 Copy of letter explaining Mrs. ____ being removed from Assistance Group due to being an ineligible student dated 01/26/04
- D-8 Copy of Case Comments
- D-9 Copy of Income Maintenance Manual Policies 2.2(D); 9.1(A)(4)(b) & (d) and; 10.4
- D-10 Copy of IG-BR-40 dated 06/03/04
- D-11 Copy of IG-BR-40 dated 08/09/04

VII. FINDINGS OF FACT

- Mr. Honaker provided the following Hearing Summary:

"Client came in for food stamp review on 11/10/03. Client was pended for additional information.

Client returned some of the pended information on 11/17/03, RAPIDS was updated with information. Additional pended information was still required.

Remaining pended information was received on 12/03/03. Case was updated in RAPIDS. At this time, worker was a new employee still on probation and supervisor was confirming cases. Gave case to supervisor to confirm.

Supervisor gave case back to worker with note that client spouse is an ineligible student. Student information was requested from spouse. Client spouse determined to be ineligible student on 01/02/04. Case referred to repayment. Case corrected on 01/02/04 with client as ineligible student and given to supervisor for confirmation.

Received fair hearing request dated 01/28/04 and received on 01/30/04. IG-BR-29 completed and sent to State Hearing Officer. Received IG-BR-40 from State Hearing Officer stating that hearing is scheduled on 06/04/04 at 9:00 a. m.

Client called to reschedule hearing date. Received new IG-BR-40 stating new hearing date of 08/06/04 at 9:30 a. m.

State Hearing Officer contacted worker to reschedule hearing date. Received IG-BR-40 stating new hearing date 10/08/04 at 9:00 a. m.”

- Mr. Honaker referred to Case Comments provided by another caseworker. The State Hearing Officer explained the ‘Hearsay Rule’ to Mrs. _____. She did not object to Mr. Honaker referring to the Case Comments.
- Mr. Honaker relied on the policy found at WVIMM Section 9.1 (A)(4)(b) STUDENTS ELIGIBLE TO PARTICIPATE; WVIMM Section 9.1 (A)(4)(d) DEFINITION OF ENROLLMENT AND PARTICIPATION. The other policy was stated on the letter dated January 26, 2004.
- Mrs. _____ believes there should be an exception to the policy. Mr. Honaker stated that caring for a disabled spouse is not an allowable exception to the policy.
- Mrs. _____ did not meet any of the criteria listed under WVIMM Section 9.1 (A)(4)(b) STUDENTS ELIGIBLE TO PARTICIPATE
- The decision was given at the conclusion of the fair hearing.

VIII. CONCLUSIONS OF LAW

West Virginia Income Maintenance Manual Section 9.1 (A)(4)(b) STUDENTS ELIGIBLE TO PARTICIPATE states in part,

Students who meet one or more of the following criteria are eligible to participate, provided all other eligibility factors are met:

- The student is employed at least 20 hours per week and is paid for the employment.

Unlike normal work registration, a student cannot substitute wages equivalent to 20 times the minimum hourly wage, but must actually work 20 hours, regardless of the amount of wages.

However, self-employed persons must be employed at least 20 hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by 20 hours.

- The student is participating in a state- or federally-financed CWS program during the regular school year. Participation means that the student has been approved for CWS during the school term and anticipates actually working during that time. To qualify for this exception, the student must be approved for CWS at the time of application. The exception begins with the month in which the school term begins or the month CWS is approved, whichever is later. Once begun, the exception continues until the end of the

month in which the school term ends, or it becomes known that the student refused an assignment. The exception is lost between school terms when there are breaks of a full month or longer for which CWS has not been approved.

- The student is included in a WV WORKS payment.
- The student is assigned to or placed in an institution of higher education through one of the following. The exception is lost during summer breaks or any other time the student is not in school. The individual's status need not be mandatory for the exception to apply.
 - * The Food Stamp Employment and Training Program
 - * JTPA
 - * Section 236 of the Trade Act of 1974
 - * An employment and training program for low-income households that is operated by a state or local government when one or more of the program's components is at least equivalent to FSE&T.
- Students who are responsible for the care of children who meet certain criteria, may be eligible to participate even though they are students.

For the following three groups, responsible means having the principal responsibility for the care of a child. No more than one person may be responsible for the care of each child.

There are three separate exceptions detailed below and followed by a summary chart.

NOTE: The last exception only may apply to a non-parent.

- * The student is the natural or adoptive parent or the stepparent of and is responsible for the care of a dependent AG member under the age of 6.
- * The student is the natural or adoptive parent or the stepparent of and is responsible for the care of a dependent AG member between the ages of 6 and 12 and adequate child care is not available to enable the student to attend class and satisfy the 20-hour work requirement or participate in a state- or federally-financed CWS program during the regular school year.
- * The student is the single parent (natural, adoptive or stepparent), regardless of marital status, and is responsible for a dependent child under age 12, regardless of the availability of adequate child care, and is enrolled full-time, as defined by the institution.

This applies in situations where only one natural, adoptive or stepparent, regardless of marital status, is in the same AG with the child.

If no natural, adoptive or stepparent is in the AG with the child, another full-time student in the same AG as the child qualifies for this exception, if the other

full-time student has parental control over the child and the student is not living with his spouse.

West Virginia Income Maintenance Manual Section 9.1 (A)(4)(b) DEFINITION OF ENROLLMENT AND PARTICIPATION states,

A student is considered to be enrolled the day he is scheduled to begin classes. Enrollment, for the purpose of being enrolled in an institution of higher education, is defined as continuing during periods of vacation or recess. Students eligible during the school year continue to be eligible, providing all other eligibility factors are met, during the summer months. Students not eligible during the school year remain ineligible during vacation periods, unless they actually obtain work or meet other criteria outlined in item b to determine student eligibility. Students who fail to maintain continuous enrollment status, or who do not intend to register for the normal school session, excluding summer school, lose their student status and have the same eligibility requirements as any other Food Stamp client.

IX. DECISION

According to the policy found at WVIMM Section 9.1 (A)(4)(d) DEFINITION OF ENROLLMENT AND PARTICIPATION, Mrs. ____ does not meet any of the eligible criteria as a student under the Food Stamp Program.

It is the decision of this State Hearing Officer, to uphold the proposal of the Department in this particular matter.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.