



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**Board of Review**  
**150 Maplewood Avenue**  
**Lewisburg, West Virginia 24901**  
**Telephone (304) 647-7476 Fax: (304) 647-7486**

**Joe Manchin III**  
**Governor**

**Secretary**

January 20, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 11, 2005. Your hearing request was based on the Department of Health and Human Resources' action to terminate your food stamp benefits.

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 the Food Stamp Program are determined based on current regulations. One of these regulations specifies that an ABAWD must meet work requirements to be eligible. As long as an ABAWD is exempt or meets certain work requirements, he may receive Food Stamps, if otherwise eligible. Otherwise, he is ineligible once he has received Food Stamps for three months without being exempt or meeting the work requirement. The three months need not be consecutive and includes Food Stamp benefits received from another state. (Section 9.1 A #2N of the West Virginia Income Maintenance Manual)

The information which was submitted at the hearing revealed that your case was closed incorrectly. The ABAWD policy was applied retroactively. You still had two months of eligibility left prior to needing a doctor's statement for a work exemption.

It is the decision of the State Hearing Officer to reverse the action of the Department to terminate your food stamp benefits.

Sincerely,

Margaret M. Mann  
State Hearing Officer  
Member, State Board of Review

cc: Board of Review  
Beverly McKinney, Department Hearing Representative

**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 January 11, 2005 for Mr. \_\_\_\_\_.

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 convened on January 11, 2005 on a timely appeal filed September 29, 2004. It should be noted that a hearing on the denial of the claimant's SSI-Related Medicaid application was also held on January 11, 2005. That decision is pending additional medical information.

It should be noted here that any benefits under the Food Stamp Program have been terminated.

All persons giving testimony were placed under oath.

**II. PROGRAM PURPOSE**

The Food Stamp Program is 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  
Beverly McKinney, Department Hearing Representative

Presiding at the hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED**

The question to be decided is whether the Department is correct in the decision to terminate the claimant's food stamp benefits because he does not meet any of the exceptions to the ABAWD policy.

**V. APPLICABLE POLICY**

**Section 9.1 A#2N of the West Virginia Income Maintenance Manual reads in part:**

(1) Definition of Able -Bodied Adult Without Dependents

An ABAWD is any individual age 18 or over, but not yet age 50.

An individual who turns 18 becomes an ABAWD in the month following his birthday. An individual is no longer an ABAWD in the month of his 50<sup>th</sup> birthday.

(2) Exemptions

Receiving Food Stamps while exempt does not count toward the 3-month limit. An individual is exempt if he:

- Lives with an individual under age 18.
- Is responsible for the care of an incapacitated person, whether or not the person receiving the care resides with the client and whether or not the incapacitated person is a member of the Food Stamp AG; or
- Is receiving UCI as the result of registering with BEP; This includes persons receiving benefits under the Trade Readjustment Act (TRA); or
- Is medically certified as physically or mentally unfit for employment according to the provisions in Section 12.15; or
- Is a pregnant woman, regardless of the expected date of delivery; or
- Is a regular participant in a drug addiction or alcoholic treatment and rehabilitation program either on a resident or non-resident basis; or
- Is a student enrolled at least half-time in any recognized school, training program or institution of higher education. A student must meet one of the exceptions to the restriction on student participation listed in Chapter 9; or
- Resides in one of the following ILC's: Brooke, Doddridge, Hancock, Hardy, Monroe, Putnam; or
- Is hired for work at least 30 hours per week; or
- Is hired for work paying the equivalent of at least 30 hours times the minimum wage per week.

**NOTE:** The last 2 exemptions qualify the individual to participate immediately, if otherwise eligible. Because this is an exemption, the individual is not required to complete any work hours to become eligible again. However, these exemptions do not qualify the individual for the additional 3-month period specified in item

(7)

training

below until he has worked 80 hours in 30 days or participated in a work or program for a month.

(3) ABAWD Work Requirement

An ABAWD must meet work requirements to be eligible. For ABAWD purposes only, work is defined as any activity performed, for monetary compensation or in-kind services, or unpaid work..... As long as an ABAWD is exempt as found in item (2) above or meets either of the 2 requirements below, he may receive Food Stamps, if otherwise eligible. Otherwise, he is ineligible once he has received Food Stamps for 3 months without being exempt or meeting the work requirement. The 3 months need not be consecutive and includes Food Stamp benefits received from another state. The work requirement is met by either:

- Working at least 20 hours per week, averaged monthly; or
- Participating in a work program such as, but not limited to, WIA, FSE&T, or a refugee resettlement program, at least 20 hours per week, averaged monthly. This does not include job search or job search training as part of a work program.

Months in which the client received prorated benefits do not count toward the 3-month limit. In addition, when circumstances change so that an ILC ABAWD, who has been exempt or meeting the requirement is no longer exempt or meeting the requirement, the month in which the change occurs is not counted toward the 3-month limit. This is true even if he has already received a full month's issuance for that month.

**EXAMPLE:** An ABAWD who works 25 hours per week loses his job the second week of February. February is not counted toward his 3-month limit.

**EXAMPLE:** An ABAWD applies on January 15 and is approved for a prorated allotment. January is not counted toward his 3-month limit.

(4) Issuance Limited Counties (ILC) and Non-Issuance Limited Counties (NILC)

The following are ILC counties and the only ones in which the 3-month limit applies.

Berkeley	Kanawha	Ohio
Cabell	Mason	Preston
Hampshire	Mercer	Raleigh
Harrison	Monongalia	Wayne
Jefferson	Morgan	Wood
	Marion	

All other counties are Non-Issuance Limited Counties (NILC).

**NOTE:** When an NILC becomes an ILC, the first month of the client's 3-month limit is the month in which the county becomes an ILC.

(5) Determining The 36-Month Period

The first 36-month period is determined as follows:

- For all individuals, regardless of the county or state of residence, the first 36-month period begins with the first month for which he receives full benefits.
- Once the 36-month period begins, it remains fixed, regardless of the ABAWD's recipient status or the county or state of residence.

(6) Regaining Eligibility

An individual whose benefits are denied or terminated under this policy can become eligible again when:

- He no longer meets the definition of an ABAWD; or
- He resides in an NILC; or
- He has met the ABAWD work requirement as specified in item (3) for a 30-day period. This does not have to be the 30 days immediately preceding the date of application; or
- He becomes exempt as specified in item (2) above; or

**NOTE:** Individuals who regain eligibility by one of the above methods must maintain eligibility monthly by meeting the ABAWD work requirement in item (2) above, by continuing to be exempt, by residing in an NILC or by continuing not to meet the definition of an ABAWD.

- He has worked 80 hours in a 30-day period. This does not have to be the 30 days immediately preceding the date of application; or he participates for a month in employment or training activities.

**NOTE:** Only individuals who have regained eligibility in this manner qualify for the additional 3-month period described in item (7) below.

(7) Qualifying For An Additional 3-Month Period Without Meeting the Work Requirement or Being Exempt

When eligibility is regained by having worked 80 hours in a 30-day period; or by participating for a month in an employment or training program, the individual is eligible to receive FS for up to 3

consecutive months without meeting the work requirement or being exempt. Prorated months

do not count toward the 3-consecutive-month limit. This is the last time in the 36 month period that he may be eligible without meeting the work requirement or being exempt. Prorated months

do not count toward the 3 consecutive month limit. After this second 3-month limit expires, he may only become eligible again by complying with the work requirement each month, residing in an NILC, or becoming exempt as specified in item (2) above.

**7 CFR § 273.24 Time limit for able bodied adults reads in part:**

(b) General Rule. Individuals are not eligible to participate in the Food Stamp Program as a member of any household if the individual received food stamps for more than three countable months during any three-year period, except that individuals may be eligible for up to three additional countable months in accordance with paragraph (e) of this section.

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED**

DHS-1) Form IG-BR-40 Appointment Letter  
DHS-2) Form IG-BR-29 Hearing/Grievance Record Information  
DHS-3) Fair Hearing Request  
DHS-4) Food Stamp Closure Notice  
DHS-5) Income Maintenance Manual Section 9.1  
DHS-6) Department's Summary

**VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**A. Findings of Fact:**

1. The claimant applied for food stamps and SSI-Related Medicaid on 03/01/2004. At that time, he was exempt from food stamp work requirements due to a "visual" disability. The Medicaid application was denied on 08/20/2004 because "drug + alcohol abuse does not meet the criteria." The case was sent back to the Medical Review Team (MRT) for reconsideration. It was denied again on 09/13/2004. At that time, the MRT worker coded the claimant as an ABAWD who had used his three months of food stamps. The claimant requested a hearing on 09/29/2004 regarding the food stamp closure and Medicaid denial. The claimant does not currently meet the State's definition of disability in order to be eligible for Medicaid.

2. Ms. McKinney testified that Mr. \_\_\_\_\_ might be eligible for two more months under Food Stamp ABAWD policy as long as he cooperates with FSET or provides verification of an exemption. At this time, he will have to make a new application.

3. Ms. McKinney explained that the worker applied the ABAWD policy retroactively because there was no medical to exempt the claimant from the Food Stamp work requirements. The worker indicated that the claimant had used his three months and the food stamps closed with an effective date of October, 2004. Actually, since the claimant was just notified in September, October was his first month of issuance under the ABAWD policy. He has two months of eligibility left under that policy. He must make another application under a new certification period, be referred to FSE&T and cooperate unless a doctor's statement is provided. There are two months left in the 36 month tracking period. If a doctor's statement is provided, the claimant would be exempt from the policy. Ms. McKinney stated it appears from the case comments that the claimant had originally been exempt because he was visually impaired. They can only do that under Veteran's policy. That was an error to start with in addition to applying the ABAWD policy retroactively. She is unsure when the certification period ended.

4. Mr. \_\_\_\_\_ stated he would be unable to meet the work requirement and does not have the money to go to a doctor for a statement.

5. The claimant was sent a notification letter dated 09/17/04. It reads in part:

"Your Food Stamps will stop. You will not receive this benefit after September, 2004. ....The following individuals are ineligible. If they are affected by the ABAWD 36 month tracking policy, the tracking period will be started after their name. \_\_\_\_\_ from 12/2002 to 11/2005. Able Bodied Adult has received food stamps for the first three month period without meeting the work requirement or being exempt." (DHS-4)

#### **B. Conclusions of Law:**

1. Policy requires that an ABAWD meet certain work requirements. Otherwise, he is ineligible once he has received Food Stamps for 3 months without being exempt or meeting the work requirement.

2. The testimony from Ms. McKinney revealed that the action taken on the claimant's case was incorrect. He was considered exempt from the work requirements until September, 2004. He received food stamps in October. There are two months left without being exempt or meeting the work requirement.

#### **VIII. DECISION**

After reviewing the information presented during the hearing and the applicable policy and regulations, it is the finding of the State Hearing Officer that the Department did not apply the ABAWD policy correctly. The claimant should not have been notified that his case was closed because he had received food stamps for three months without meeting the work requirement. Testimony from the Department's representative showed the claimant has two months remaining. The Department is reversed in the decision to close the claimant's case. The case will be reopened and the claimant's benefits reinstated for two months. In addition, he will be given the opportunity to provide documentation for a work exemption.

#### **IX. RIGHT OF APPEAL**

See Attachment.

#### **X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

hnForm IG-BR-29.