



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
E-mail Address: raywoods@wvdhhr.org

Joe Manchin III
Governor

March 4, 2005

March 7, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 18, 2004. Your hearing request was based on the Department of Health and Human Resources' action to decrease the amount of your Food Stamps based on application of the student policy.

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 specifies that persons who meet the definition of a student are ineligible to participate in the Food Stamp Program unless they meet an exception to the student policy. (WV Income Maintenance Manual Section 9.1, 2, e and 9.1, 4, b)

Information submitted at the hearing revealed that you are considered an ineligible student for purposes of the Food Stamp Program since you do not meet an exception to the student policy.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to decrease the amount of your Food Stamps.

Sincerely,

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

cc: State Board of Review
Ben Roberts, ESW
[REDACTED] Esq., LAWV

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 March 7, 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 originally scheduled for July 23, 2004 on a timely appeal filed June 3, 2004. It was rescheduled for October 7, 2004, and was rescheduled again and convened on November 18, 2004.

It should be noted here that the Claimant's Food Stamp benefits have continued at their previous level pending the results of this fair hearing.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled Food Stamps 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

Ben Roberts, Economic Service Worker, DHHR

_____, Attorney, Legal Aid of WV

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 the Claimant's Food Stamp Benefits should be decreased?

V. APPLICABLE POLICY

West Virginia Income Maintenance Manual Sections 9.1,2, e and 9.1,4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Department's Exhibits

- D-1 Food Stamp redetermination appointment letter dated May 20, 2004
- D-2 Rapids case comments
- D-3 WV Income Maintenance Manual Section 9.1
- D-4 Food Stamp decrease letter dated May 28, 2004
- D-5 Fair Hearing request
- D-6 IG-BR-29
- D-7 Food Stamp increase letter dated June 7, 2004
- D-8 Fair Hearing appointment letter dated June 9, 2004
- D-9 Fair Hearing appointment letter dated June 14, 2004

Claimant's Exhibits

- C-1 Student scheduling form and tuition/grant/loan information
- C-2 Psychological Evaluation for _____

VII. FINDINGS OF FACT

1. Mr. Roberts testified that the Claimant's Food Stamps were reduced from \$254 to \$142 after she reported during a May 27, 2004 redetermination that she would be attending college for a three-year period and was determined to be an ineligible student.
2. The Claimant reported during the redetermination that she would start classes on June 7, 2004 and would not be working 20 hours per week or completing work study while attending college (D-2).
3. The Claimant's children were ages 13 and 15 at the time of the redetermination.
4. The Claimant was determined to be an ineligible student based on policy located in WV Income Maintenance Manual Section 9.1 and a Food Stamp decrease letter (D-4) was sent on May 28, 2004 which states:

"Action: Your Food Stamps will decrease from \$254 to \$142 effective 07/01/04.
Reason: The number of people receiving this benefit has decreased. "
5. Mr. [REDACTED] questioned whether the intent of the Program is for single mothers to improve their educational situation and become more capable of providing for their families. He requested that the Department's policy be applied liberally considering the

Claimant's efforts to improve her life situation by enrolling in college while, at the same time, attending to her children's needs.

6. Ms. _____ testified that she is attending classes through West Virginia University in _____ and will be attending school in _____ later in conjunction with the nursing program. She stated she was previously married but has been a single parent since 2001. She stated she is considered a full-time student and would be unable to maintain a job in her present situation. Ms. _____ testified that she normally returns home from school around 2:30 p.m., at which time she cares for her children and assists her learning disabled daughter, who cannot read or spell. Ms. _____ said that completion of her own homework does not permit her to go to bed until 1 a.m. or 2 a.m. She stated she has difficulty meeting her weekly expenses, had only \$5 remaining from her last child support check after paying her electric bill, and would have problems obtaining money to buy additional food. She stated customers receiving WV Works benefits are provided funds for clothing, gas, etc., while she is only interested in maintaining her Food Stamps. She stated she does not wish to apply for WV Works as a result of child support redirection requirements.

VIII. CONCLUSIONS OF LAW

1. WV Income Maintenance Manual Section 9.1, 2, e, states:

Persons who meet the Food Stamp definition of a student are ineligible to participate in the Program and may not be a separate AG.

2. WV Income Maintenance Manual Section 9.1, 4, a, states:

In applying the student policy, it is first necessary to determine if any member of the Food Stamp AG is a student. If so, whether or not the student policy applies must be determined as found in item a.

Student participation in the Food Stamp Program is limited to individuals who meet the criteria in item b.

a. Determination of Applicability of the Student Policy

If a member of the Food Stamp AG is a student and meets any one of the following criteria, he is not considered a student for Food Stamp purposes, and eligibility is determined as for any other individual. He does not have to meet one of the exceptions to the restriction on student eligibility in order to qualify.

- He is under age 18.
- He is age 50 or over.
- He is physically or mentally disabled. See Chapter 12.
- He is attending high school.
- He is attending school less than half-time.
- He is enrolled full-time in a school or training program which does not meet the definition of an institution of higher education. Vocational schools which are a substitute for high school are not considered institutions of higher education.

An institution of higher education is a business, technical, trade or vocational school that normally requires a high school diploma or its equivalent for enrollment in the curriculum or a college or university that offers degree programs whether or not a high school diploma is required for a particular curriculum. For this definition, a college includes a junior, community, 2-year or 4-year college.

- He is participating in an on-the-job training program. This does not include the practical experience requirements which may be part of some courses of study, i.e., student teaching, internships, etc.

A person is considered to be participating in on-the-job training, and thus not considered a student, during the period of time that he is being trained by the employer. During the period of time that he is only attending classes, he is considered a student.

Any other student must meet one of the exceptions to the restriction on student eligibility in item b to qualify for Food Stamps.

3. WV Income Maintenance Manual Section 9.1, 4, b, states:

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.

Responsible for Child Age:	2 Parents	1 Parent
Birth to 6 Met	Eligible- Exception Met	Eligible- Exception
6-12, adequate child care not Met *	Eligible- Exception Met*	Eligible- Exception
6-12, adequate child care is Met available	Ineligible- Exception Not Met	Eligible- Exception

Paternity does not have to be established to qualify as a father for these purposes. Only when the adults involved do not agree about the paternity of the child is any verification of paternity required.

* The Worker must determine on a case-by-case basis whether or not the parent who is not a student is available to provide adequate child care.

4. WV Income Maintenance Manual Section 9.1, d, states:

d. Definition of Enrollment and Participation

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

Testimony provided during the hearing reveals that the Claimant is considered a student for Food Stamp purposes and does not meet an exception to the student policy. The student policy reveals no exceptions for the parents of children with learning disabilities. Therefore, the Department correctly applied the student policy and the Claimant is ineligible to participate in the Food Stamp Program.

It is the decision of the State Hearing Officer to **uphold** the action 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.