



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 18, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 3, 2008. Your hearing request was based on the Department of Health and Human Resources' action to terminate your Food Stamp benefits based on the imposition of a sanction/penalty.

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 that all mandatory individuals must register with BEP for employment within 30 days of the date of the original approval, unless exempt according to Section 13.2 or referred to FSE&T. A recipient who fails to register by the due date established on the ES-6 or verification checklist is subject to a Food Stamp penalty and the Worker must send an adverse action notice. If the Worker discovers or the client notifies the Worker that he registered anytime before the end of the month in which the adverse notice expires, the penalty must not be imposed and any lost benefits must be restored. (West Virginia Income Maintenance Manual, Chapter 13.5 & 13.6 and §7 CFR 273.7)

The information submitted at your hearing reveals that you failed to register with BEP by January 22, 2008 as required by the Department. You registered on March 7, 2008.

It is the decision of the State Hearings Officer to **uphold** the action of the Department to terminate your Food Stamp benefits based on the imposition of a Food Stamp penalty.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Brenda Bailey, Mingo DHHR

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

_____,
Claimant,

v.

Action Number: 08-BOR-1078

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 April 3, 2008 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 April 3, 2008 on a timely appeal, filed verbally March 17, 2008.

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
Brenda Bailey, Department Representative

Presiding at the Hearing was Cheryl Henson, 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 its action to terminate the Claimant's Food Stamp benefits by imposing a Food Stamp penalty.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Chapter 13.5 & 13.6
7 CFR § 273.7 Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-A Hearing Summary
- D-B Notification letter dated December 26, 2007
- D-C Notification letter dated January 24, 2008
- D-D WV Income Maintenance Manual Section 13
- D-E BEP activity information

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving Food Stamp benefits in December 2007. The Department sent the Claimant a letter dated December 26, 2007 (D-B) requesting that he register with the Bureau of Employment programs. The letter included the following:

Food Stamp recipients, for whom registration for work with the Bureau of Employment Programs (BEP) is required, must complete this mandatory registration within 30 days of the date their Food Stamp application is approved and every 12 months after that. This requirement affects individuals in this

case. Our records show that the following individuals need to register with BEP by the dates listed:

_____ 01/22/08

You must contact your worker if any of the individuals listed are unable to work. Reasons for exemption from this requirement are as follows:

Receiving SSI
Physical or mental inability to work
Employed 30 hours per week
In a Drug or Alcohol Treatment Program
Enrolled School/Training at least ½ time
Receiving minimum earning equal to 30 hours per week
Receiving Unemployment Compensation
Caring for child under age 6
Caring for incapacitated person

- 2) The Department sent the Claimant a letter dated January 24, 2008 which included the following information:

A food stamp work requirement penalty has been applied to _____. The reason for this penalty is because of FAILURE TO REGISTER W/BEP. This is penalty number 1. _____ will remain ineligible for Food Stamps for 3 months or until compliance, whichever is longer.

- 3) The Department sent the Claimant a second letter dated January 24, 2008 which included the following information:

ACTION: Your Food Stamps will stop. You will not receive this benefit after FEBRUARY 2008.
REASON: Each individual has failed for the reasons stated below.

The following individuals are ineligible. If they are affected by the ABAWD 36 month tracking policy, the tracking period will be stated after their name.

_____ FROM 3/2007 to 7/2010
Individual failed to register with BEP.

- 4) West Virginia Income Maintenance Manual, Chapter 13.6 states in part: A Food Stamp penalty is imposed when individuals do not comply with work requirements and do not have good cause. 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.

- 6) West Virginia Income Maintenance Manual, Chapter 13.5 states, in pertinent part, that all mandatory individuals must register with BEP for employment within 30 days of the date of the original approval, unless exempt according to Section 13.2, or referred to FSE&T. They must register every 12 months thereafter, regardless of the length of time that BEP considers the registration valid. Actions which constitute a registration are defined by BEP. A recipient who fails to register by the due date established on the ES-6 or verification checklist is subject to a Food Stamp penalty and the Worker must send an adverse action notice.

When the recipient is due to re-register with BEP at any point during the certification period, the Worker must send an ES-6 or verification checklist which gives the client at least 10 days to register. When the registration is due in the same month the redetermination is due, the Worker must give the client at least 10 days to register as part of the redetermination process.

This section of policy goes on to say – “A recipient who fails to register by the due date established on the ES-6 or verification checklist is subject to a Food Stamp penalty and the Worker must send an adverse action notice. See Section 13.6. If the Worker discovers or the client notifies the Worker that he registered anytime before the end of the month in which the adverse notice expires, the penalty must not be imposed and any lost benefits must be restored.”

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern the Food Stamp Program direct that recipients who are not otherwise exempt (employed, disabled, etc. . .), must meet Food Stamp work requirements (FSE&T). One of these work requirements is that all mandatory individuals must register with BEP.
- 2) The evidence reveals that the Claimant was required to re-register with BEP, and the Department sent proper notification (D-B) to him advising of this requirement. The Claimant was given until January 22, 2008 to provide verification of his registration. The Claimant registered with BEP on March 7, 2008 and provided verification to the Department.
- 3) Based on the evidence, the Department is correct to impose the Food Stamp penalty.

IX. DECISION:

The Department's action to terminate the Claimant's Food Stamp benefits based on the imposition of a Food Stamp penalty is **upheld**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

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

ENTERED this 18th Day of April, 2008

**Cheryl Henson
State Hearing Officer**