



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 15, 2008

Dear Mr. _____

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 16, 2008. Your hearing request was based on the Department of Health and Human Resources' proposed action to terminate your Food Stamp benefits due to failure to cooperate with employment and training activities.

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 as follows: Non-compliance with the Food Stamp work and training requirements causes ineligibility for Food Stamps until a reported change meets an exemption.

The information, which was submitted at your hearing, revealed that you refused to cooperate with the Food Stamp employment and training program and failed to produce a doctor's statement of your inability to work.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate your Food Stamp benefits.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Catherine J. Hoeck, DHHR
[REDACTED] Legal Aid

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

_____,
Claimant,

v.

Action Number: 08-BOR-1627

**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 August 15, 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 July 16, 2008 on a timely appeal, filed June 23, 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
Catherine Hoeck, DHHR, Income Maintenance Worker

Claimant's representative was _____ of Legal Aid

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in their proposed action to apply a sanction and terminate your Food Stamp benefits for refusal to cooperate with FSE&T.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy § 13.2, 13.6, 4.1 and 4.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 General Physical dated June 10, 2008
- D-2 Healthplex Functional Capacity Evaluation dated May 29, 2008
- D-3 Registered Nurse statement dated March 10, 2008
- D-4 EMG Report dated March 3, 2008
- D-5 Notice of proposed termination of Food Stamps dated June 18, 2008
- D-6 West Virginia Income Maintenance Manual §13.2
- D-7 West Virginia Income Maintenance Manual §13.6
- D-8 West Virginia Income Maintenance Manual §4.1
- D-9 West Virginia Income Maintenance Manual §4.2

Claimant's Exhibits:

- C-1 Note from Registered Nurse dated July 14, 2008
- C-2 Complete Report from [REDACTED] Physical Therapy dated May 6, 2008
- C-3 Information sheet on Lyrica medication

VII. FINDINGS OF FACT:

- 1) The Claimant was an active recipient of the Food Stamp program under the Able-bodied Adult Without Dependents program, which includes a limited time to receive Food Stamps and a requirement to cooperate with the Department's Food Stamp Employment and Training (FSE&T) program.
- 2) The Claimant was advised that he must participate with the FSE&T program and keep his scheduled appointment for May 29, 2008. He did not keep this appointment but did walk in to see the FSE&T worker on June 12, 2008. He advised the worker that he would not participate, as he was not able to work. The worker advised that he must cooperate until he has provided a doctor's statement of his inability to work. He refused to do so.

- 3) The Department sent notice dated June 18, 2008 of their proposed action to impose a sanction for non-compliance with the Food Stamp Employment and Training program. This notice advised that he had not provided a statement of his inability to work. Such a statement would exempt the claimant from the FSE&T requirements.
- 4) The Claimant requested a hearing on June 23, 2008.
- 5) The Claimant, in February 2008, applied for Medicaid due to his contention that he was disabled. The Department's local staff reviewed the medical documentation received for this program before submitting it to the Department's Medical Review Team.
- 6) The doctor who completed the General Physical (Exhibit D-1) made note that the claimant complained of severe pain in his feet, difficulty concentrating and depression. The doctor issued a diagnosis of neuropathy and hypertension as primary diagnosis and depression and hyperlipidemia as minor diagnosis. The doctor noted that the claimant was able to work full-time at customary occupation or like work. [REDACTED] evaluation (Exhibit D-2) notes that, "Overall test findings, in combination with clinical observations, suggest Mr. [REDACTED]'s subjective reports of pain and associated limitations to simply be unreliable and inaccurate." This Occupational Therapist notes that the claimant lifted a lot of weight and is able to perform physical work at the sedentary level of physical demand characteristics of work based on his endurance and walking ability mostly. The Therapist recommended counseling to help deal with pain, disability, poor social skills and poor self-care skills.
- 7) The Claimant provided a statement from a Registered Nurse (Exhibit C-1) that states that he has difficulty working due to Chronic Neuropathy and severe pain in his feet. The Claimant told of being electrocuted years ago and he blames this for his Neuropathy. His claim for Workers Compensation had been denied. He also provided an information sheet addressing side effects of Lyrica, a pain medication that he takes. The common side effects were listed as dizziness and sleepiness. Another side effect, which, the claimant states he experiences, is trouble concentrating. The claimant testified that he cannot stand, sit or walk for any length of time due to pain. He reports he lacks energy to take care of himself so he wears dirty clothes and does not bathe regularly. He indicates that he has concerns that working would mess up his appeal of his Social Security claim.
- 8) **West Virginia Income Maintenance Manual § 13.6**
Food Stamp Work Requirement Penalties:
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

A non-WV Works recipient who does not comply with the Food Stamp work requirements in Section 13.2 is subject to the following penalties. The minimum penalty period must be served unless the client meets an exemption.

9) **West Virginia Income Maintenance Manual Chapter 13.2**

All Food Stamp recipients are subject to a work requirement, unless exempt.

1. Work Requirements

-Cooperation with FSE&T. FSE&T requirements are met for applicants who agree to cooperate with FSE&T. Failure to agree results in ineligibility of the individual until he complies or reports a change, which makes him exempt.

Exemptions from Food Stamp Work Requirements

- A person under age 16
- A person age 16 or 17 who is not the payee or primary person
- A person age 16 or 17 who is attending school or in employment training at least ½ time
- A person enrolled at least ½ time in any recognized school or training program
- A person 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 six
- Individuals receiving UCI, as a result of registering with BEP
- Individuals who are physically or mentally unfit to engage in full-time employment
- Regular participants in a drug addiction or alcoholic treatment and rehabilitation program
- 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.
- Individuals who receive WV Works, so long as they are subject to and comply with a WV WORKS work requirement.

10) **West Virginia Income Maintenance Manual Chapter 4.1**

The primary responsibility for providing verification rests with the client.

11) **West Virginia Income Maintenance Manual Chapter 4.2**

E. Work Requirements

Illness or Impairment of an individual for FS: Prior to exempting the individual from the work requirement, FSE&T or ABAWD requirements. ONLY non-obvious illnesses or impairments must be verified with medical reports.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in Chapter 13.6 and 13.2 that a sanction and ineligibility results when there is non-cooperation with FSE&T and no exemption has been met.

- 2) Medical evidence does not support the claimant's testimony of his inability to work. It is also clear that this claimant does not meet any of the other exemptions listed in Chapter 13.2 of the Income Maintenance Manual.

IX. DECISION:

It is the decision of this Hearing Officer to **uphold** the Department in its action to discontinue the Claimant's Food Stamp benefits due to non-compliance with the Employment and Training requirements.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th Day of August 2008.

Sharon K. Yoho
State Hearing Officer