



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 19, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 17, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your Food Stamps for failure to meet the student exemptions.

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: Unless certain exemptions are met, otherwise eligible individuals who meet the Food Stamp definition of a student are ineligible to participate in the program (West Virginia Income Maintenance Manual § 9.1).

The information which was submitted at your hearing revealed that you do meet the definition of a student but fail to meet any of the student exemptions as dictated by policy.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to terminate your Food Stamps for failure to meet the student policy exemptions.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Susan Godby, Economic Service Supervisor

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

_____,
Claimant,

v.

Action Number: 08-BOR-1887

**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 September 17, 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 September 17, 2008 on a timely appeal, filed August 1, 2008.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

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
Susan Godby, Economic Service Supervisor

Presiding at the Hearing was Kristi Logan, 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's decision to terminate Claimant's Food Stamps was correct.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 9.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Form IG-BR-29
- D-2 Notification Letter dated July 24, 2008
- D-3 West Virginia Income Maintenance Manual § 9.1
- D-4 Claimant's Registration Form for [REDACTED] College for Fall 2008
- D-5 Department's Case Summary

Claimants' Exhibits:

- C-1 Code of Federal Regulations Title 7 § 2014 a
- C-2 Code of Federal Regulations Title 7 § 2015 e
- C-3 Order to Show Cause for Failure to Pay Child Support dated June 25, 2008
- C-4 Code of Federal Regulations Title 7 § 273.9 c(3)
- C-5 [REDACTED] Supreme Court Ruling of _____ - vs. Department of Human Services

VII. FINDINGS OF FACT:

- 1) Claimant had a Food Stamp review in July 2008. He reported that he was enrolled at [REDACTED] College and would be attending this fall. A termination notification letter dated July 24, 2008 was issued and read in part (D-2):

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

_____ is an ineligible student.

- 2) The Department contends that Claimant does not meet any of the exemptions as stated in policy that would make him eligible to continue receiving Food Stamps as a college student (D-5).
- 3) Claimant testified that he has been attending [REDACTED] College since August 2007. He is taking nine (9) credit hours this semester, one (1) on campus, one (1) internet course and one (1) independent study course (D-4). Claimant testified his tuition is paid for by grant money. He applied for the work study program but there were no openings.

Claimant works part-time for the Osteopathic School in [REDACTED] WV making \$8.00 an hour. He works an average of six (6) hours a month there. He also works for DMI as a title examiner. He earns a \$25 flat fee for each assignment plus reimbursement for expenses. His work for DMI is sporadic; he worked six (6) hours for them last week, but did not work at all last month.

- 4) Claimant argued that his grant money should not have been used against him in termination his Food Stamps. He expected a reduction but not a termination. Claimant presented into evidence Code of Federal Regulations Title 7 § 2014 a, § 273.9 c(3) and a [REDACTED] Supreme Court decision (C-1, C-3 and C-5) as proof that his financial aid should not be counted against him in the determination of Food Stamps.

Claimant also introduced Code of Federal Regulations Title 7 § 2015 e into evidence (C-2). This code states that a parent with responsibility for the care of a dependant child under age six (6) meets the student eligibility requirements for the Food Stamp program. Claimant is court ordered to pay \$50 a month for his four (4) year old child. This child does not live with him and he has not paid child support since September 2007 (C-3).

- 5) West Virginia Income Maintenance Manual § 9.1 A (2)f states:

Unless certain exemptions are met, otherwise eligible individuals who meet the Food Stamp definition of a student are ineligible to participate in the Program and may not be a separate Assistance Group (AG).

(1) 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 item (2) below in order to qualify. An individual is not considered a student if:

- He is under age 18.
- He is age 50 or over
- He is physically or mentally disabled
- 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.

Any other student must meet one of the exceptions to the restriction on student eligibility in item (2) below to qualify for Food Stamp benefits:

(2) Students Eligible to Participate

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 or 80 hours a month, 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 at least 20 hours a week or 80 hours a month, regardless of the amount of wages. However, self-employed persons must be employed at least 20 hours per week or 80 hours a month, and receive weekly earnings at least equal to the federal minimum wage multiplied by 20 hours or monthly earnings equal to the federal minimum wage multiplied by 80 hours.
- The student is participating in a state- or federally-financed College Work Study program during the regular school year
- 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 Food Stamp Employment and Training Program (FSE&T)
 - Workforce Investment Act (WIA)
 - 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
- The student has the principal responsibility for the care of a child who meets certain criteria. 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:
 - The student is the natural, adoptive, or stepparent of and is responsible for the care of an AG member under the age of 6
 - The student is the natural, adoptive, or stepparent of and is responsible for the care of an 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 an AG member 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

- 6) West Virginia Income Maintenance Manual § 9.1 A(3) 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 (2) above 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.

VIII. CONCLUSIONS OF LAW:

- 1) As dictated by policy, an individual who meets the Food Stamp definition of a student is not eligible to receive Food Stamps unless he meets a student exemption.
- 2) Claimant is attending an institute of higher learning at least half time and is not working eighty (80) hours a month. Claimant argued that by being court ordered to pay child support qualified him for the dependant child exemption. Not only has Claimant not paid child support in two (2) years, but he does not have physical custody of his child. This does not qualify him to meet the dependant child exemption. Claimant does not meet any other exemption listed in policy to make him an eligible student for Food Stamps.
- 3) Claimant's financial aid had no bearing in the termination of his Food Stamps and has no bearing in this decision.
- 4) Claimant no longer meets the eligibility requirements as a student to continue receiving Food Stamps.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate Claimant's Food Stamps.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of September, 2008.

**Kristi Logan
State Hearing Officer**