



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 11, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 9, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your Food Stamps due to the imposition of a Food Stamp Employment and Training (FSE&T) 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 as follows: Food Stamp recipients who do not receive WV Works must agree to cooperate with FSE&T work requirements. Failure to agree results in ineligibility of the individual until he complies or reports a change which makes him exempt (West Virginia Income Maintenance Manual § 13.2).

The information which was submitted at your hearing revealed that you no longer meet an exemption from Food Stamp work requirements and refused to cooperate with FSE&T.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to terminate your Food Stamps due to the imposition of a FSE&T penalty.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review  
Heather Walker, Economic Service Worker

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

\_\_\_\_\_,  
**Claimant,**

**Action Number: 08-BOR-1975**

**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 9, 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 9, 2008 on a timely appeal, filed August 21, 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

Heather Walker, Economic Service Worker

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 impose a Food Stamp Employment and Training penalty on Claimant was correct.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual § 13.2, 13.6 and 12.15

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Department's Case Summary
- D-2 Hearing Appointment Letter
- D-3 Combined Application Form and Rights and Responsibilities Form dated July 8, 2008
- D-4 Combined Application Form and Rights and Responsibilities Form dated August 21, 2008
- D-5 Social Security Administration's Online Inquiry System (SOLQ) Screen
- D-6 Facsimile from \_\_\_\_\_ dated August 18, 2008 including Sanction Request and Verification Job Registration
- D-7 Case Comments (CMCC) from Rapids Computer System
- D-8 Notification Letter dated August 20, 2008
- D-9 Form IG-BR-29
- D-10 West Virginia Income Maintenance Manual § 13.3, 13.4, 13.5 and 13.6

**Claimants' Exhibits:**

- C-1 None

**VII. FINDINGS OF FACT:**

- 1) Claimant had a review on July 9, 2008. At this review, it was discovered that Claimant was no longer receiving Supplemental Security Income (SSI) (D-5). Claimant's SSI Medicaid was closed and an appointment scheduled for him to apply for SSI-Related Medicaid with an evaluation by the State Medical Review Team (MRT). Because he was no longer determined to be disabled by the Social Security Administration, Claimant lost his work exemption based on disability for Food Stamp purposes (D-8).
- 2) A referral was made to \_\_\_\_\_ of WorkForce West Virginia for Claimant to cooperate with Food Stamp Employment and Training (FSE&T) work requirements on

July 9, 2008. A facsimile was received from Ms. \_\_\_\_\_ on August 18, 2008 which read in part (D-6):

\_\_\_\_\_ did not want to cooperate for amount of benefits he is receiving.

Failed to comply/did not want to comply for benefits

- 3) A notification letter dated August 20, 2008 was issued and read in part (D-8):

A Food Stamp work requirement penalty has been applied to \_\_\_\_\_. The reason for this penalty is because of Failure to Comply w/FSE&T. This is penalty number 2. \_\_\_\_\_ will remain ineligible for Food Stamps for 6 months or until compliance, whichever applies.

Since Claimant was the only member of the Assistance Group (AG), his Food Stamps were terminated. Claimant completed his SSI-Related Medicaid application but it has not been submitted to MRT for review as the Department has not received his medical records yet.

- 4) Claimant testified that he lost his SSI in 2006 due to excessive assets. He has reapplied for SSI since then, and been denied again due to excessive assets. He has a lawyer working on his appeal.

Claimant stated he went to WorkForce WV in August 2008 as he was referred to do. He registered with job service and even filled out some job applications. Ms. Moore told him that he would have to be working at least twenty (20) hours a week to continue receiving Food Stamps. He got mad at her over that and left without taking the rest of his paperwork with him.

Claimant stated that he is unable to work due to his medical conditions. He has COPD, a bad back, depression and is bi-polar. He has not provided the Department with a doctor's excuse exempting him from work requirements. Claimant stated he did not feel like it was fair to make him work twenty (20) hours a week for \$146 of Food Stamps a month, which is less than minimum wage. Claimant did tell Ms. Moore at WorkForce WV he would not work for his small amount in Food Stamps.

- 5) West Virginia Income Maintenance Manual § 13.2 A states:

The following work requirements apply to all Food Stamp recipients who:

- Do not receive and/or are disqualified from WV WORKS; or
- Do not receive WV WORKS, but do receive Food Stamp benefits in the same Food Stamp AG with WV WORKS recipients.

#### 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. Failure to cooperate after referral to FSE&T in RAPIDS, results

in application of a penalty for failure to meet the work requirement. This is not a requirement for those who live in counties where FSE&T is not operational. If FSE&T is not operational in the client's county of residence, the client must register with BEP

6) West Virginia Income Maintenance Manual § 13.2 A(2) states:

The following Food Stamp recipients are exempt from the Food Stamp work requirements and are not subject to a Food Stamp penalty for failure to comply.

- A person under age 16.
- A person age 16 or 17 who is not the Food Stamp payee or RAPIDS primary person.
- A person age 16 or 17 who is attending school or enrolled in an employment training program on at least a half-time basis.
- A person enrolled at least half-time in any recognized school, recognized training program, or institution of higher education.
- 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 6, or of an incapacitated and/or disabled individual.
- 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, either on a resident or non-resident basis.
- 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 and do not meet any of the other Food Stamp exemptions listed above, so long as they are subject to and complying with a WV WORKS work requirement.

7) West Virginia Income Maintenance Manual § 12.15 B states:

ESTABLISHING DISABILITY WITHOUT A PHYSICIAN'S STATEMENT

Disability is established without a physician's statement as follows:

- The individual receives benefits from a governmental or private source, and these benefits are based on his own illness, injury or disability.
- The individual is a veteran with a service-connected or non-service connected disability, rated or paid as total, under Title 38 of the United States Code.
- The individual is a veteran who is considered by VA to be in need of regular aid and attendance, or permanently housebound, under Title 38 of the United States Code.
- The individual is a surviving spouse of a veteran considered by VA to be in need of aid and attendance, or permanently housebound, under Title 38 of the United States Code.

- The individual is a surviving child of a veteran and considered by VA to be permanently incapable of self-support, under Title 38 of the United States Code.
- The individual is a surviving spouse or child of a veteran, who receives or has been approved to receive, compensation for a service-connected death, or pension benefits for a non-service-connected death, under Title 38 of the United States Code and who has one of the following conditions:
  - Permanent loss of use of both hands, both feet, or one hand and one foot
  - Amputation of leg at hip
  - Amputation of leg or foot because of diabetes mellitus or peripheral vascular diseases
  - Total deafness, not correctable by surgery or hearing aid
  - Statutory blindness, unless due to cataracts or detached retina
  - IQ of 59 or less, which was established after attaining age 16
  - Spinal cord or nerve root lesions resulting in paraplegia or quadriplegia
  - Multiple sclerosis in which there is damage of the nervous system because of scattered areas of recurring inflammation which has progressed to varied interference with the function of the nervous system, including severe muscle weaknesses, vision and speech defects, and paralysis.
  - Muscular dystrophy with irreversible wasting of the muscles with a significant effect on the ability to use the arms and/or legs.
  - Impaired renal function due to chronic renal disease, documented by persistent adverse objective findings, resulting in severely reduced function which may require dialysis or kidney treatment.
  - Amputation of a limb, when current age is 55 or older
- Recipients of federal, state or local government disability retirement, who receive such benefits due to one of the conditions specified above.
- Those individuals who receive federally- or state-administered supplemental benefits under Section 1616(a) of the Social Security Act (optional state supplementation to SSI payments) provided that eligibility to receive the benefits is based upon the disability or blindness criteria used under Title XVI of the Social Security Act or under Section 212 (a) or Public Law 93-66. West Virginia has no such program.
- Recipients of annuity payments, under Section 231a(a)(1)(iv) of the Railroad Retirement Act of 1974, who also have been determined eligible to receive Medicare under the Railroad Retirement Act.
- Recipients of an annuity payment, under Section 231a(a)(1)(v) of the Railroad Retirement Act of 1974, who have been determined to be disabled based on the criteria used under Title XVI of the Social Security Act

8) West Virginia Income Maintenance Manual § 13.6 A and A(2) states

A non-WV WORKS recipient who does not comply with the Food Stamp work requirements is subject to the following penalties.

The minimum penalty must be served unless the client meets an exemption. The penalty is never applied to an entire AG, only to the individual who does not comply. When the reported exemption ends, the client is subject to the original penalty, unless he has complied or meets another exemption.

Penalties are applied sequentially, regardless of the requirement not met. In addition, penalties are applied consecutively and one penalty must end before another one is imposed.

A non-WV WORKS recipient who refuses or fails to register with BEP, cooperate with FSE&T, refuses employment or refuses to provide information about employment status and job availability is subject to the following penalties for at least the minimum penalty period or until he reports a change which makes him exempt from the work requirements.

- First violation: The individual is removed from the AG for at least 3 months or until he meets an exemption, whichever is less. If after 3 months, the individual has not complied or met an exemption, the penalty continues until the failure or refusal stops, or until the individual reports a change that makes him exempt according to Section 13.2,A,2 for some reason other than UCI-related activities.
- Second violation: The individual is removed from the AG for at least an additional 6 months or until he meets an exemption, whichever is less. If after the 6 months, the individual has not complied or met an exemption, the penalty continues until the failure or refusal ceases, or until the individual reports a change that makes him exempt according to Section 13.2,A,2 for some reason other than UCI-related activities.
- Third and subsequent violations: The individual is removed from the AG for at least an additional 12 months or until he meets an exemption, whichever is less. If after the 12 months, the individual has not complied or met an exemption, the penalty continues until the failure or refusal ceases, or until the individual reports a change that makes him exempt according to

#### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy dictates that an individual must comply with work requirements, unless exempt, to be eligible for Food Stamps. Claimant lost his disability exemption when his SSI was terminated. Claimant does not meet any other exemption as stated in policy.
- 2) By Claimant's own admission, he refused to cooperate with the WorkForce WV worker and Food Stamp Employment and Training. A Food Stamp penalty was correctly imposed against Claimant.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to impose a Food Stamp penalty against Claimant.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 11<sup>th</sup> Day of September, 2008.**

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**Kristi Logan  
State Hearing Officer**