



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

October 3, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 25, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to impose a Food Stamp penalty for failure to cooperate with Food Stamp Employment and Training (FSE&T) requirements.

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 from work requirements (West Virginia Income Maintenance Manual § 13.2).

The information which was submitted at your hearing failed to prove your noncompliance with FSE&T work requirements.

It is the decision of the State Hearings Officer to **reverse** the decision of the Department to impose a Food Stamp penalty on your benefits.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Murriel Hylton, Economic Service Supervisor

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

_____,

Claimant,

v.

Action Number: 08-BOR-2076

**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 25, 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 25, 2008 on a timely appeal, filed September 2, 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

Grace Glass, Food Stamp Employment and Training Worker, WorkForce WV (by phone)
Murriel Hylton, 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 impose a Food Stamp penalty against Claimant is correct.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 13.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Form IG-BR-29
- D-2 Hearing Request received September 2, 2008
- D-3 Notification Letter dated August 18, 2008
- D-4 Appointment Letter with WorkForce WV dated June 27, 2008
- D-5 West Virginia Income Maintenance Manual § 9.1, 13.2 and 13.6
- D-6 Department's Case Summary

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

- 1) Claimant applied for Food Stamps on June 24, 2008. A referral was sent to the Food Stamp Employment and Training (FSE&T) Worker for Claimant to cooperate with work requirements. A letter dated June 27, 2008 was mailed to Claimant for an appointment with the FSE&T worker, [REDACTED] at WorkForce WV for July 31, 2008 (D-4).
- 2) Claimant did not attend the appointment. Ms. [REDACTED] notified Claimant's caseworker of his noncompliance and a notification letter dated August 18, 2008 was issued and read in part (D-3):

Your Food Stamps will stop. You will not receive this benefit after August 2008. _____ failed to comply with Food Stamp Employment and Training.

- 3) Ms. [REDACTED] testified that she mailed Claimant his appointment letter on June 27, 2008 to [REDACTED] WV. The appointment letter was not postal returned. It is their policy to request a Food Stamp penalty when a client fails to attend an appointment. Clients are not routinely contacted for failing to attend FSE&T appointments.

Ms. Glass testified that she has met with Claimant previously and he has always cooperated with FSE&T work requirements in the past.

- 4) Claimant testified that he never received the appointment letter. Had he received it, he would have attended the appointment as he has always cooperated with work requirements when receiving Food Stamps in the past.

Claimant lives with his grandmother who usually checks the mail. She separates his mail from hers. He has not been having any problems with receiving his mail, but cannot say for sure his grandmother didn't lose it. He could only testify that he never received the letter. Claimant confirmed his address is [REDACTED] WV and has not changed recently.

- 5) 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) As dictated by policy, a Food Stamp penalty was imposed on Claimant for his failure to attend an appointment with the FSE&T worker to comply with work requirements.
- 2) Claimant gave credible testimony that he failed to receive an appointment letter with the FSE&T worker. Claimant has a history of compliance with Food Stamp work requirements. The Department failed to prove Claimant would not have cooperated with the FSE&T worker had he received proper notification of his appointment.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to impose a Food Stamp penalty for Claimant's failure to cooperate with FSE&T work requirements.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd Day of October, 2008.

**Kristi Logan
State Hearing Officer**