



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 14, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 26, 2008. Your hearing request was based on the Department of Health and Human Resources' action to deny your Food Stamp benefits based on the application of a voluntary quit penalty.

In arriving at a decision, the State Hearing 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: Good cause for voluntarily quitting a job can be established based on unsuitability if commuting time exceeds two hours per day. (West Virginia Income Maintenance Manual Section 13.6)

Based on information submitted at your hearing, you have established good cause for voluntarily terminating your employment with Influent, Inc.

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

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Jennifer Samples, FSS, DHHR

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

_____,

Claimant,

v.

Action Number: 08-BOR-726

**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 14, 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 March 26, 2008 on a timely appeal filed January 28, 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
Jennifer Samples, Family Support Specialist, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 acted correctly in denying the Claimant's Food Stamp benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 4.2, 13.2 and 13.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-A IG-BR-29 Hearing/Grievance Record Information and case comments dated January 28, 2008
- D-B West Virginia Income Maintenance Manual Section 13.3
- D-C Case comments dated January 17, 2008
- D-D Pay information from _____ (_____, Inc.)
- D-E Notice of Decision dated January 8, 2008

Claimant's Exhibits:

- C-A Income tax information

VII. FINDINGS OF FACT:

- 1) The Claimant applied for Food Stamps on January 7, 2008. At that time, the Claimant reported that he quit his full-time job at _____, Inc., a telemarketing company located in [REDACTED] on December 19, 2007. The Claimant stated that he terminated his employment because the amount of his bonuses was inaccurate and the company was incorrectly deducting federal income taxes from his wages.
- 2) The Department determined that the Claimant did not have good cause for terminating his employment and applied a Food Stamp voluntary quit penalty. As

a result, the Claimant's Food Stamp application was denied and he was determined ineligible for Food Stamps for a period of three (3) months.

- 3) The Department sent the Claimant a Notice of Decision on January 8, 2008 (D-E) informing him of the denial of benefits.
- 4) The Family Support Specialist testified that the Claimant had provided Payroll Error Forms (D-D) from _____ dated October 15, 2007 and October 31, 2007 which indicate the company was aware that federal taxes were being deducted from the Claimant's checks and had taken steps to remedy the error. The Claimant had provided several pay stubs (D-D) which reveal that the company stopped deducting federal income taxes from his wages beginning on pay date December 14, 2007.
- 5) The Claimant testified that he terminated his employment because he had claimed exempt income tax status on his W-4 form and the company continued to deduct federal taxes from his wages. He testified that he was exempt from filing federal income taxes based on his anticipated earnings for the year. Exhibit C-A indicates that an individual under age 65 with single filing status must file a tax return if annual gross income totals \$8,750 or more. The Claimant also contended that he had received incorrect bonus payments (although some of these payments were corrected by the company) and stated he had to wait until Saturdays at 2 p.m. to receive his paychecks, even though the checks were dated on Fridays.

In addition, the Claimant testified that he resides near the [REDACTED] County line and he drove 55 to 60 miles one-way to his job site. He stated that his round-trip commute to work totaled more than two hours. The Claimant testified that he did not wish to drive on Route 16, but instead drove to work on Route 50 (a four-lane highway) because he felt the road was safer. He stated that he drove in the dark and felt that Route 16 was dangerous because he observed tractor-trailers traveling at high rates of speed. He also stated there were few places to pull over on Route 16 in the event of an emergency. The Claimant indicated that he often encountered bumper-to-bumper rush hour traffic on his way out of Reno and that it took about 10 to 15 minutes to return to the interstate when he left work.

The Claimant indicated that he resides on the eastern end of [REDACTED] close to the [REDACTED] line (about eight miles from [REDACTED]).

The Family Support Specialist testified that the Department had considered the Claimant's commuting time by estimating that he made the trip via Route 16 and had not computed commute time via Route 50.

- 6) West Virginia Income Maintenance Manual Section 13.2A lists work requirements for the Food Stamp Program. This section states, in part:

- Voluntary Quit, including Voluntary Reduction in hours. Details are in Section 13.3. Not having voluntarily quit or reduced hours of employment is an eligibility requirement for non-exempt applicants, as well as a work requirement for non-exempt recipients. The applicant who takes either of these actions without good cause, is ineligible the month of application and 2 calendar months following the month of application or until he reports a change which makes him exempt from the Food Stamp work requirement, whichever is earlier. This 3-month-ineligibility period is not counted as one of the applicant's Food Stamp penalties.

Voluntarily quitting employment after becoming a recipient results in application of a Food Stamp penalty for failure to meet the work requirement. Neither an applicant nor a recipient may be required to return to the same or comparable employment before eligibility is reestablished. Work-requirement eligibility is reestablished at the end of the 3-month ineligibility period for applicants, or at the end of the appropriate penalty period for recipients, unless they report their exempt status earlier.

7) West Virginia Income Maintenance Manual Chapter 13.3 (D-B) states, in part:

A. ACTIONS WHICH ARE VOLUNTARY QUILTS

An applicant who voluntarily quit employment is ineligible for 3 months; a penalty is applied to an active recipient. See Section 13.2, A.1 and 13.6.

A voluntary quit has occurred when all of the following conditions exist:

- The individual left full-time employment of at least 30 hours per week, other than self-employment, of his own volition, or the individual voluntarily reduced his work hours to below 30 hours/week.

C. GOOD CAUSE FOR VOLUNTARILY QUITTING

Once a determination is made that the client voluntarily quit, the Worker determines if the individual had good cause for leaving employment. If any of the following are met, good cause is established.

- The individual was discriminated against by the employer based on age, race, sex, color, disability, religious beliefs, national origin or political beliefs.

- The work demands or conditions were unreasonable, such as, but not limited to, working without being paid on schedule.

- The enrollment by the individual at least half-time in any recognized school, training program or institution of higher learning, which requires the individual to leave employment.

- The acceptance by any AG member of employment or enrollment of at least half-time in any recognized school, training program or institution of higher learning in another area which requires the AG to move and, thereby, requires the individual to leave employment.

- The employment does not meet the suitability requirements.

Employment is considered unsuitable if any of the following conditions exist:

- The wage offered is less than the highest of:
 - o The applicable federal minimum wage,
 - o The applicable State minimum wage, or

- o Eighty (80) percent of the federal minimum wage, if neither the federal nor the State minimum wage is applicable.

- The employment in question is on a piece-rate basis and the average hourly yield the employee can reasonably expect is less than the applicable hourly wages specified above.

- The individual, as a condition of employment, is required to join, resign from or refrain from joining, any legitimate labor organization.

- The work is at a site subject to a work stoppage as a result of a strike or lockout at the time of the offer, unless the strike has been enjoined under section 208 of the Labor Management Relations Act (Taft-Hartley Act) or Section 10 of the Railway Labor Act.

In addition, employment is considered suitable unless the AG member can demonstrate or the Worker otherwise becomes aware that:

- The degree of risk to health and safety is unreasonable.

- The individual is physically or mentally unfit to perform the employment, as established by documented medical evidence or reliable information provided by another identifiable source.

- The employment offered is not in the client's major field of experience. This is applicable only within the first 30 days of becoming subject to the work requirements.

- The distance traveled to the employment from the client's residence is unreasonable, considering the expected wage and the time and cost of commuting. Employment is not considered suitable if daily commuting time exceeds two hours per day, not including the transporting of a child to and from a child care facility. Nor is employment considered suitable if the distance to the place of

employment prohibits walking and neither public nor private transportation is available to transport the individual to the job site.

See Section 4.2 for possible sources of verification of the reason for the quit. Verification of the reason is routinely required when the client claims good cause except as follows.

If the individual and the Worker are both unable to obtain the needed verification because the cause for the quit resulted from circumstances that, for good reason, cannot be verified, such as a resignation from employment due to discrimination, unreasonable demands by an employer, or because the employer cannot be located, the individual must not be penalized. The situation must be thoroughly recorded on the appropriate RAPIDS screen.

- 8) West Virginia Income Maintenance Manual Chapter 4.2 states that good cause for voluntarily terminating employment must be verified for the Food Stamp Program. This section lists some possible sources of verification, however, it states that verification is not limited to the listed sources.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that an individual can establish good cause for voluntarily quitting employment (based on unsuitability) when the commuting time to the job exceeds two hours per day.
- 2) The Claimant testified that his commuting time from his residence near the [REDACTED] County line to [REDACTED] exceeded two hours per day as he traveled 55 to 60 miles one way. While utilizing Route 50 may have added additional time to his commute, he provided credible testimony explaining that he chose this route due to safety concerns. Considering traffic patterns near his work site and the location of his residence, it is reasonable to establish that his round-trip commuting time totaled at least two hours. There is no policy provision to indicate that the Claimant must travel to work via the shortest available route.
- 3) Food Stamp policy states that good cause must be established when an applicant/recipient voluntarily terminates employment, however, verification of good cause is not limited solely to the methods listed in Chapter 4.2 of the Income Maintenance Manual. As mileage and anticipated commuting time can be computed based on the Claimant's chosen route, good cause has been verified.
- 4) As the Claimant has established good cause for voluntarily quitting his employment, the Department's decision to deny his Food Stamp application is incorrect.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department to deny the Claimant's Food Stamp application. Food Stamp benefits should be issued retroactively to the application date of January 7, 2008.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of April, 2008.

Pamela L. Hinzman
State Hearing Officer