



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 31, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 11, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits through the Supplemental Nutrition Assistance Program (SNAP) based on the imposition of a second sanction/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 SNAP benefits is based on current policy and regulations. Some of these regulations state that all SNAP recipients are subject to a work requirement, unless exempt. A SNAP penalty is imposed when individuals do not comply with work requirements. For a second violation, the individual is removed from the AG for at least 6 months or until he meets an exemption, whichever is less. (West Virginia Income Maintenance Manual Sections 13.2 & 13.6)

Information submitted at your hearing reveals that you failed to comply with SNAP work requirements as you did not register with the Bureau of Employment Programs (BEP).

It is the decision of the State Hearing Officer to **uphold** the action of the Department in applying a second penalty to your SNAP benefits. The 6-month SNAP penalty is effective January 1, 2009 and will remain in place through June 2009 or until compliance, whichever is less.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Teri Colman, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 08-BOR-2657

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 March 31, 2009 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 11, 2009 on a timely appeal filed January 2, 2009.

II. PROGRAM PURPOSE:

The Supplemental Nutrition Assistance Program (SNAP) 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 SNAP 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

-----, Claimant's spouse

Teri Colman, FSS, DHHR

Presiding at the hearing was Thomas Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Agency was correct in its action to impose a second-level SNAP penalty in the Claimant's case.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 13.2, 13.5 & 13.6
7 CFR § 273 Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Comments from RAPIDS (computer system) from 10/28/08 – 3/3/09
- D-2 Notice of Decision dated 10/29/08
- D-3a Workforce West Virginia Activity for ----- (BEP registration verification)
- D-3b Workforce West Virginia Activity for ----- (BEP registration verification)
- D-4 Notice of Decision dated 12/9/09
- D-5 WV Income Maintenance Manual, Chapter 13.2, 13.5, and 13.6

VII. FINDINGS OF FACT:

- 1) The Department presented evidence to indicate the Claimant and her spouse were advised during the completion of their SNAP review on October 28, 2008 that they were required to register with the Bureau of Employment Program (BEP) within 30 days (D-1) in order to remain eligible for benefits through the Supplemental Nutrition Assistance Program (SNAP).
- 2) The Claimant and her spouse were again notified in a Notice of Decision (D-2) dated October 29, 2008 that as a condition of eligibility, they were required to register with BEP by November 27, 2008 (30 days from the date of the review).
- 3) On or about December 9, 2008, the Claimant was notified via a Notice of Decision that her SNAP benefits were reduced effective January 1, 2009, as the Claimant and her spouse failed to register with BEP. Both the Claimant and her spouse were removed from the SNAP assistance group (AG) and placed in a second (2nd) SNAP sanction.
- 4) Exhibit D-3a and Exhibit D-3b includes an activity list for the Claimant and her spouse regarding BEP / Workforce contact that is used by the Department to verify registration. The Department noted that Exhibit D-3a verifies the Claimant's spouse registered with BEP on 3/9/09 and the Claimant registered on 3/3/09.
- 5) The Claimant acknowledged that she received written notice dated October 29, 2008 (D-2) advising of the 30-day BEP registration requirement but stated that she did not receive the Notice of Decision advising of the reduction in SNAP benefits because she did not have the money to purchase a key for her new mailbox until late December. The Claimant's spouse purported that the BEP has contacted him by phone every six months and he insisted that he has been registered with BEP the entire time.

- 6) Because the Claimant's spouse insisted he has been registered and active with BEP the entire time, and that the information included in Exhibit D-3a was incorrect, the record remained open so that he could verify registration occurred prior to the November 27, 2008 deadline. As a matter of record, the Claimant's spouse agreed to return verification of registration with BEP for the period in question (November and/or December 2008) by the close of business on March 11, 2009. If the information submitted satisfied the registration verification requirement by the Department, only the Claimant's SNAP sanction would need to be reviewed and the SNAP reduction could potentially be recalculated. An E-mail message was received from the Department's representative on March 12, 2009 indicating the Claimant's spouse failed to return the requested verification.
- 7) West Virginia Income Maintenance Manual Chapter 13.2 (General SNAP Work Requirements and Exemptions). SNAP E&T requirements are met for applicants who agree to cooperate with SNAP E&T. If SNAP E&T is not operational in the client's county of residence, the client must register with BEP. Failure of an individual to register within the time limits found in Section 13.5,A and each 12 months results in application of a penalty for not meeting the work requirement unless an exemption (employment, disability, caring for children under the age of 6, etc. . .) from participation is met by the individual.
- 8) West Virginia Income Maintenance Manual, Chapter 13.5,A states – All mandatory individuals must register for employment with WORKFORCE WV/BEP, referred to in this section as BEP, within 30 days of the date of the original approval, unless exempt according to Section 13.2 or referred to SNAP E&T. Recipient must register every 12 months thereafter, regardless of the length of time that BEP considers the registration valid. Actions which constitute a registration are defined by BEP.
- 9) West Virginia Income Maintenance Manual, Chapter 13.6,A,2 states in part: 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. See Section 13.2,A,2 for exemptions.

A SNAP penalty is imposed when individuals do not comply with work requirements. Penalties are: First violation - The individual is removed from the AG for a minimum of 3 months. If non-compliance continues, the penalty continues until the failure or refusal stops or until the individual reports a change that makes him exempt. Second violation [Emphasis added]: The individual is removed from the AG for at least 6 months or until he meets an exemption, whichever is less. Third and subsequent violations result in the individual being 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 Section 13.2.A.2.

VIII. CONCLUSIONS OF LAW:

- 1) The regulations that govern SNAP benefits direct that recipients who are not otherwise exempt (employed, disabled, etc. . .), must meet SNAP work requirements. Neither the Claimant nor her spouse is exempt from the SNAP work requirements.

- 2) Evidence submitted in this case reveals the Claimant and her spouse were notified on two occasions (verbally on October 28, 2008 and in writing in a notice dated October 29, 2008) that they were required to register with BEP within 30 days as a condition of continued participation in the SNAP program. While the Claimant and her spouse indicated they did not receive the December 9, 2009 notice advising of a reduction in SNAP benefits (due to the imposition of a sanction), the Department sent the notice to the new address provided by the Claimant. Reversing the imposition of a sanction based on the failure of the Claimant and her spouse to obtain access to their mail would not only set a bad precedent, it is simply unreasonable. Moreover, the Claimant's spouse was afforded an opportunity to verify his claim that he was registered with BEP during the time in question and he failed to return the requested information pursuant to his agreement on the record.
- 3) Because the Claimant and her spouse failed to cooperate with SNAP work requirements, the Department was correct to reducing the Claimant's SNAP benefits based on the imposition of a second SNAP sanction/penalty.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department in applying a second sanction/penalty to the Claimant's SNAP benefits. The 6-month SNAP penalty is effective January 1, 2009 and will remain in place through June 2009 or until compliance, whichever is less.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of March, 2009.

Thomas Arnett

State Hearing Officer