



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General**

**Joe Manchin III
Governor**

**Board of Review
P.O. Box 1736
Romney, WV 26757**

**Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary**

April 22, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 22, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your eligibility for the Supplemental Nutrition Assistance Program.

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 Supplemental Nutrition Assistance Program or SNAP is based on current policy and regulations. These regulations provide that full time students are ineligible to participate in the program. Individuals are not considered students for SNAP purposes when the individual is under age 18, age 50 or over, physically or mentally disabled, attending high school, attending school less than half time, enrolled in a school or training program which does not meet the definition of an institution of higher education, or participating in an on-the-job training program. Full-time students may be eligible to participate with the SNAP program when certain exemptions exist in the individual's circumstances. Full-time students are eligible to participate in the SNAP program when the individual is employed at least 20 hours per week, participating in a college work study program, included in a WV Works payment, or the student has the principal responsibility for the care of a child. (West Virginia Income Maintenance Manual § 9.1)

The information which was submitted at your hearing revealed that both you and your wife meet the definition of a full time student and do not qualify for any exemptions to the student policy criteria.

It is the decision of the State Hearing Officer to Uphold the action of the Department to terminate your eligibility for the Supplemental Nutrition Assistance Program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
-----, FSS

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

----- ,

Claimant,

v.

Action Number: 10-BOR-1044

**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 22, 2010 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 April 21, 2010 on a timely appeal, filed March 22, 2010.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (SNAP) 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 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 wife
-----, Family Support Supervisor

Presiding at the Hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its decision to terminate the Claimant's Supplemental Nutrition Assistance Program benefits by determining that both assistance group members are considered full time students.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 9.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Student schedule for -----dated March 8, 2010
- D-3 West Virginia Income Maintenance Manual § 9.1
- D-4 Notice of Decision dated March 16, 2010

VII. FINDINGS OF FACT:

- 1) The Claimant and his wife were current recipients of the Supplemental Nutrition Assistance Program, herein after SNAP since December 2009. On February 26, 2010, the Claimant's wife reported that she and her husband were enrolled at the [REDACTED]. The Claimant provided Exhibit D-2, Student schedule, to the Department verifying her attendance as twelve (12) credit hours with a start date of March 8, 2010, thus meeting the definition of a full time student.
- 2) -----, Family Support Supervisor testified that the worker processing the information removed the Claimant's wife from the SNAP benefits but did not remove the Claimant from the assistance group. ----- testified that this was a Departmental error and that the Claimant should have been removed at the time that the full time college student status of both individuals was reported to the Department.
- 3) On March 15, 2010, the Claimant met with ----- to discuss the reduction in SNAP benefits. ---- informed the Claimant of the student policy and the Claimant reported that he too was currently enrolled at the [REDACTED] but was unsure of the total amount of credit hours he was participating in for the upcoming semester. ----- purported that later in day the Claimant informed her that he was receiving twelve (12) credit hours for the semester.
- 4) ----- testified that the information supplied by the Claimant and his wife led to the determination of both individuals being considered full time college students. ----- indicated that both individuals did not meet any exemptions to the student policy set forth by the West Virginia Income Maintenance Manual. On March 16, 2010, the Department issued Exhibit D-4, Notice of Decision which documents in pertinent part:

Your SNAP benefits will stop. You will not receive this benefit after March 2010.

The following individuals are ineligible:

-----from 11/2009 to 10/2012-is an ineligible student.

----- from 3/2008 to 2/2011-is an ineligible student.

- 5) The Claimant and his wife testified that they were married on January 6, 2010. The Claimant testified that his wife is currently pregnant wife an estimated due date of delivery of October 2010. The Claimant purported that the monies that his family receives through student loans is not a sufficient amount to cover the family expenses and to purchase food. The Claimant indicate that the lack of resources have forced them to eat meals with his godfather. The Claimant's wife testified that the family is in great need of SNAP benefits and that she needs to eat properly for herself and her unborn child.
- 6) West Virginia Income Maintenance Manual § 9.1 (Exhibit D-3) states:

Students

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

It is first necessary to determine if any member of the SNAP AG is considered a student as found below in item (1).

For individuals determined to be students, participation in the SNAP Program is limited to those students who meet the criteria in item (2) below.

NOTE: Any student who lives in a dormitory operated by the school and receives the majority of his meals from the school is ineligible to participate in the SNAP Program regardless of whether or not he meets an exception to the policy in this item. See Section 8.2.

(1) Determination of Applicability of the Student Policy

If a member of the SNAP AG is a student and meets any one of the following criteria, he is not considered a student for SNAP 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. See Section 12.15.
- 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. This does not include the practical experience requirements which may be part of some courses of study, i.e., student teaching, internships, etc.

A person is considered to be participating in on-the-job training, and thus not considered a student, during the period of time that he is being trained by the employer. During the period of time that he is only attending classes, he is considered a student.

Any other student must meet one of the exceptions to the restriction on student eligibility in item (2) below to qualify for SNAP 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 CWS program during the regular school year. Participation means that the student has been approved for CWS during the school term and anticipates actually working during that time. To qualify for this exception, the student must be approved for CWS at the time of application. The exception begins with the month in which the school term begins or the month CWS is approved, whichever is later. Once begun, the exception continues until the end of the month in which the school term ends, or it becomes known that the student refused an assignment. The exception is lost between school terms when there are breaks of a full month or longer for which CWS has not been approved.

- 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 exception is lost during summer breaks or any other time the student is not in school. The individual's status need not be mandatory for the exception to apply.

The SNAP Employment and Training Program (SNAP E&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 SNAP E&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.

Paternity does not have to be established to qualify as a father for these purposes. Only when the adults involved do not agree about the paternity of the child is any verification of paternity required.

If no natural, adoptive or stepparent is in the AG with the child, another full-time student in the same AG as the child may qualify for this exception, if he has parental control over the child.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that full time college students are ineligible to participate with the Supplemental Nutritional Assistance Program unless certain criteria are met. Exemptions to rule state that students are eligible to participate with the program when the individual participates in paid employment of at least 20 hours per week, participates in a state or federally financed college work study program, included in a WV Works payment, or has the principal responsibility for the care of child.
- 2) Testimony from the Claimant and his wife failed to indicate that their household circumstances qualified them for an exemption to participate with the SNAP program under student policy guidelines. Based on evidence and testimony presented during the hearing, the Department was correct in its decision to terminate the assistance group's eligibility for the SNAP program.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the decision of the Department to terminate the Claimant's eligibility for the Supplemental Nutrition Assistance Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of April 2010.

Eric L. Phillips
State Hearing Officer