



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

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

November 12, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 28, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your benefits through the Supplemental Nutrition Assistance Program (SNAP) based on its determination that you are not disabled and exempt from the Able-Bodied Adults without Dependents (ABAWD) work requirements.

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 able bodied SNAP recipients between the ages of eighteen (18) and fifty (50) living in specific areas are subject to a work requirement, unless exempt. One exemption to this policy is when an individual is medically certified as physically or mentally unfit for employment. SNAP policy provides that disability can be established without a physician's statement when the individual is the recipient of a governmental or private source based on his own illness, injury or disability; or in certain instances, veterans, and surviving spouses or children of veterans many qualify for this provision. Otherwise, the disability is established by means of a physician's statement which includes enough information to allow the worker to determine if the client's condition renders him unfit for employment. (West Virginia Income Maintenance Manual Sections 9.1.A.2 (m) and 12.15)

Information submitted at your hearing reveals that you are subject to the ABAWD work requirements. Because you claimed to be disabled, you are required to provide specific evidence of such in order to be evaluated for a disability exemption to these work requirements. Because you are not a recipient of a governmental or private source based on your own illness, injury or disability, and are not a veteran, surviving spouse or child of a veteran, you are required to provide a specific type of physician's statement in order to be evaluated for the disability exemption from the ABAWD policy. You did not provide the Department with this physician's statement and were noncompliant with the work requirements.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate your SNAP eligibility.

Sincerely,

Cheryl A. Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Tera Pendleton, [REDACTED] DHHR

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

-----,

Claimant,

v.

Action Number: 10-BOR-1937

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 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. The hearing was convened on October 28, 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

Tera Pendleton, Income Maintenance Worker, [REDACTED] DHHR

Presiding at the hearing was Cheryl A. Henson, State Hearing Officer and a member of the State 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 SNAP benefits based on non-cooperation with the ABAWD policy work requirements.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 9.1.A.2 (m) and 12.15

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case comments from RAPIDS computer system
- D-2 Notification letter dated April 26, 2010 and Combined Application Form (CAF)
- D-3 Notification letter dated May 4, 2010
- D-4 WV Income Maintenance Manual Section 1.4
- D-5 Notification Hand-Out
- D-6 Notification letter dated August 25, 2010
- D-7 RAPIDS computer screen printout of SNAP issuance history

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was receiving benefits from the Supplemental Nutrition and Assistance Program (SNAP), formerly known as the Food Stamp Program, on April 26, 2010 when the Department completed an interview with him and subsequently sent him a Verification Checklist (D-2) requesting that he provide certain verification of his inability to work. The checklist included the following pertinent information:

This is to inform you that the information listed below is needed to establish your eligibility for SNAP. If this information is not made available to this office by 05/26/10 your eligibility for benefits and/or deductions cannot be established or continued.

INDIVIDUAL INFORMATION NEEDED:

INABILITY TO WORK

Proof this individual is exempt from SNAP work requirement.

THE FOLLOWING IS NEEDED FOR YOUR SNAP: ...DOCTOR STATEMENT THAT YOU ARE UNABLE TO WORK.

- 2) The Department representative, Tera Pendleton, testified that the Claimant is an able bodied adult living in an Issuance Limited County (ILC) who indicated during an April 2010 interview with the Department that he was unable to work or participate in the SNAP work program requirements. The Claimant is forty-one (41) years of age. She testified that the Department's policy dictates that recipients may receive three full issuances of SNAP benefits without meeting the work requirements or being exempt. After that point the individual is no longer eligible without either meeting the work requirements or being determined exempt. She added that the Claimant had received four (4) full issuances (D-7) of SNAP benefits prior to the notice of termination being issued on August 25, 2010. The evidence shows (D-7) the Claimant received full issuances of SNAP benefits during the months of May, June, July and August 2010.
- 3) Subsequent to the Department's issuance of the verification checklist (D-2) in April 2010, the Claimant reported that he was unable to provide a physician's statement because he had not seen any local physicians. The Department then provided him with a form that he could present to a physician to have a general physical completed at the Department's expense.
- 4) Ms. Pendleton testified that the Claimant subsequently provided no documentation to support he was unable to work, and failed to participate with the work requirements. On August 25, 2010 the Department sent him a notification letter (D-6) informing him that his SNAP was terminating after August 2010 because he failed to cooperate with the work requirement. She added that the Department allowed additional time for him to provide the verification because it realized he was having difficulty in providing such.
- 5) The Claimant contends that he is disabled, and that he was unable to find a physician who would see him without medical coverage and was therefore unable to comply with the Department's requirement of providing a medical statement from a physician. He added that even with the Department's forms authorizing payment for a general physical, he continued to be unable to secure the medical evaluation. He testified that he informed the Department of this problem on numerous occasions, and did not receive adequate assistance from them. He stated that the Department attempted to help him by providing the names of physicians who may be willing to work with him, but he continued to be unable to comply with this requirement. He contends that it is unreasonable for the Department to terminate his SNAP eligibility because he was unable to provide this medical verification.
- 6) West Virginia Income Maintenance Manual, Chapter 9.1.A.2 (m) and (3) states in pertinent part:

Able-Bodied Adults without Dependents (ABAWD)

For any AG listed above, any individual who meets the definition of an ABAWD below and who is normally required to be included in the AG, can only receive benefits when he is otherwise eligible and:

- Is meeting an exemption listed in item (2) below; or
- Is meeting the work requirements outlined in item (3) below; or
- Is residing in a Non-Issuance Limited County (NILC); or
- Is in the first 3-month limit period while not meeting the ABAWD work requirement or being exempt

(1) Definition of ABAWD

An ABAWD is any individual who is age 18 or over, but not yet age 50. An individual who turns 18 becomes an ABAWD in the month following his birthday. An individual is no longer an ABAWD in the month of his 50th birthday.

(2) Exemptions

SNAP benefits received while exempt do not count toward the 3-month limit. An individual is exempt if he:

- Is medically certified as physically or mentally unfit for employment according to the provisions in Section 12.15

These exemptions qualify the individual to participate immediately, if otherwise eligible, regardless of how many months of benefits he has already received.

(3) ABAWD Work Requirement

As long as an ABAWD is exempt as found in item (2) above or meets either of the 2 requirements below, he may receive SNAP benefits, if otherwise eligible. Otherwise, he is ineligible once he has received SNAP benefits for 3 months without being exempt or meeting the ABAWD work requirement.

- 7) West Virginia Income Maintenance Manual Section 9.1.A.2.m (4) provides that Kanawha County, West Virginia is considered an Issuance Limited County (ILC) and therefore individuals living within this county and receiving SNAP benefits are subject to the ABAWD work requirements.
- 8) West Virginia Income Maintenance Manual Section 12.15 provides that disability in regard to the SNAP work requirement policy in Section 13.2, A is established in a specific manner. The policy states in pertinent part:

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 the 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 50 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 provide 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.

ESTABLISHING DISABILITY WITH A PHYSICIAN'S STATEMENT

1. Definition of Physician's Statement

The term physician's statement means a medical report from a licensed medical professional, including physician's surgeons, doctors of osteopathy, chiropractors, etc.

2. Content of The Physician's Statement

Generally, the statement must contain enough information to allow the worker to determine if the client's condition renders him unfit for employment.

If the physician makes a definite statement that the client is permanently and totally disabled, no further information is needed. Usually, however, the physician describes the situation, and the worker must make the determination. In these situations, the statement must contain:

- The type of condition, including the diagnosis if known;
- Any unusual limitations the condition imposes on the client's lifestyle; and
- The length of time the condition is expected to last. This is required only to set a control for re-evaluation; there is not durational requirement for which the condition must exist or be expected to exist.

- 9) The Claimant did not dispute the Department's assertion that he was noncompliant with the ABAWD work program requirements.

- 10) No evidence was provided to support that the Claimant is a veteran, or surviving spouse or child of a veteran.
- 11) The Claimant lives in Kanawha County, West Virginia.

VIII. CONCLUSIONS OF LAW:

- 1) Policy and regulations that govern SNAP direct that in order to be eligible, able bodied recipients between the ages of eighteen (18) and up to fifty (50) years of age who are not otherwise exempt (employed, aged and/or disabled, etc. . .) must meet ABAWD work requirements. An individual is no longer an ABAWD in the month of his fiftieth (50th) birthday. The Claimant was forty one (41) years of age at the time of the Department's action; therefore, he was subject to the Department's ABAWD policy for determining SNAP eligibility.
- 2) Policy also provides that an individual is eligible to receive SNAP for three months in a thirty six (36) month period while not meeting the ABAWD work requirement or being exempt from the ABAWD policy. The evidence shows the Claimant received more than three (3) full issuances of SNAP benefits while not meeting the ABAWD work requirement or being exempt prior to the Department's determination to terminate his eligibility.
- 3) Policy provides that individuals who live in Non-Issuance Limited Counties (NILC) are not subject to the ABAWD policy work requirements. The Claimant lives in an Issuance Limited County (ILC) which requires him to cooperate with the ABAWD policy.
- 4) Policy provides that individuals who claim to be disabled may become exempt from the ABAWD work requirements in certain circumstances. Specific guidelines are given for meeting these requirements; specifically, disability can be established without a physician's statement when the individual is the recipient of a governmental or private source based on his own illness, injury or disability, or in certain instances, a veteran, surviving spouse or child of a veteran may qualify for this provision. Otherwise, the disability is established by means of a physician's statement which includes enough information to allow the worker to determine if the client's condition renders him unfit for employment.
- 5) The Claimant is not a veteran, or surviving spouse or child of a veteran, and was not receiving any type of benefit that would allow him to establish disability without a physician's statement; therefore, policy requires that he provide the Department with a physician's statement from a licensed medical professional which contains enough information to allow the worker to determine if his condition renders him unfit for employment. The Claimant provided no physician's statement and therefore the Department was unable to establish an exemption for him under this policy. The Claimant was also noncompliant with the ABAWD work requirements.
- 6) The Claimant, having been found to live in an ILC that is subject to the ABAWD work requirement policy and having received at least three (3) full issuances of SNAP benefits while not meeting a work requirement or being exempt, is found to be ineligible for SNAP.
- 7) The Department was correct in its decision to terminate the Claimant's SNAP eligibility.

IX. DECISION:

Based on the evidence presented during the hearing, and the applicable policy and regulations, the Department's proposal to terminate the Claimant's SNAP eligibility is **upheld**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of November, 2010.

**Cheryl A. Henson
State Hearing Officer
Member, State Board of Review**