



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

March 29, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 25, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your Supplemental Nutrition Assistance Program (SNAP) effective February 1, 2010 due to income ineligibility which resulted when a sanction was applied against you.

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 and benefit levels for SNAP are based on current policy and regulations. Some of these regulations state that a non-WV WORKS recipient who refuses or fails to register with BEP (Bureau of Employment Programs), cooperate with FSE&T (Food Stamp Employment and Training), 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. (WVDHHR Income Maintenance Manual Section 13.6.A.2)

The information submitted at your hearing reveals that you failed to comply with registration requirements or provide evidence that you are exempt from those requirements.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in applying a sanction against you which resulted in termination of your SNAP.

Sincerely,

Cheryl 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-777

**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 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 25, 2010 on a timely appeal filed February 4, 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, Department Representative

Presiding at the Hearing was Cheryl 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 the Department was correct in its proposal to terminate the Claimant's SNAP effective February 1, 2010 due to excessive income.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual §1.2.D. , 1.2.I, 10.4.B.C.D, and Appendix B.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notification letter dated October 8, 2009
- D-2 Notification letter dated January 7, 2010
- D-3 West Virginia Income Maintenance Manual §13.6.A.2
- D-4 Packet of medical evidence received by the Department on February 23, 2010

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving SNAP, formerly known as Food Stamps, as a two (2) person household on October 8, 2009 when the Department sent her a notification letter which included the following pertinent information:

All Supplemental Nutrition Assistance Program (SNAP) recipients for whom registration for work with the Bureau of Employment Programs (BEP) is required, must complete this mandatory registration within 30 days of the date their SNAP application is approved and every 12 months after that.

This requirement affects individuals in this case. Our records show that the following individuals need to register with BEP by the dates listed:

----- 11/06/2009

If you do not register by this date, but prior to the end of the month in which the registration is due, you must notify your worker.

You must contact your Worker if any of the individuals listed are unable to work. Reasons for exemption from this requirement are as follows:

Receiving SSI	Receiving Unemployment Compensation
Physical or mental inability to work	/Caring for child under Age 6

Employed 30 hours per week / Caring for incapacitated person
In a Drug or Alcohol Treatment Program
Enrolled School/Training at least ½ time
Receiving minimum earning equal to 30 hours per week

- 2) The Department's Representative, Tera Pendleton, testified that the Claimant did not register with BEP, and on January 7, 2010 the Department sent her another notice which included the following pertinent information:

A Supplemental Nutrition Assistance Program (SNAP) work requirement penalty has been applied to ----- . The reason for this penalty is because of FAILURE TO REGISTER W/BEP. This is penalty number 1. ----- will remain ineligible for SNAP benefits FOR 3 MONTHS OR UNTIL COMPLIANCE, WHICHEVER IS LONGER.

ACTION: Your SNAP benefits will stop. You will not receive this benefit after January 2010.

REASON: Income is more than the gross income limit for you to receive benefits.

The number of people receiving this benefit has decreased.

The following individuals are ineligible. ----- – failed to register with BEP

[REDACTED]

Your Gross Income.....1211.42
SNAP Gross Income Limit.....1174.00

- 3) The Department Representative testified that the Department received medical documents from the Claimant on February 23, 2010 (D-4) but none of the documents provided evidence from the physician that indicated the Claimant was unable to work or that she met any of the exemptions from participation. This evidence is not relevant as it was provided after the Department's January 7, 2010 action in this case.
- 4) The Claimant stated she does not dispute the Department's calculations of her income; however she does dispute the SNAP sanction against her that resulted in termination of her SNAP eligibility. She testified that she did not register with BEP because her attorney told her not to participate in fear of it affecting her recent application for Social Security disability benefits. She provided no evidence to support that she meets any of the exemptions to the program. The Claimant appeared confused with the Department's processes, and stated she previously asked to apply for disability medical assistance with the Department but does not know if that happened or not. The Department Representative explained during the hearing that the Claimant needs to have a medical statement from her physician that speaks to her inability to work in order to meet an exemption for the SNAP program work requirements.

5) The West Virginia Income Maintenance Manual §13.2 states in pertinent part:

All SNAP recipients are subject to a work requirement, unless exempt. There are 2 separate and distinct policies which define these work requirements and the exemptions from these requirements.

A. SNAP WORK REQUIREMENTS FOR NON-WV WORKS RECIPIENTS

The following work requirements apply to all SNAP recipients who:

- Do not receive and/or are disqualified from WV WORKS; or
- Do not receive WV WORKS, but do receive SNAP benefits in the same SNAP AG with WV WORKS recipients.

1. Work Requirements

- Registration with BEP. Details are in Section 13.5,A. 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.

2. Exemptions from Work Requirements

- Individuals who are physically or mentally unfit to engage in full-time employment. See Section 12.15. Should the client become able to work, he becomes subject to the SNAP work requirements at the next redetermination, unless exempt for some other reason.

6) The West Virginia Income Maintenance Manual §13.5.A.1 states in pertinent part:

A. WORK REGISTRATION

1. Registration Requirements

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. Recipients 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.

7) The West Virginia Income Maintenance Manual §13.6.A.2 states in pertinent part:

A non-WV WORKS recipient who refuses or fails to register with BEP 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.

8) The West Virginia Income Maintenance Manual §12.15 states in pertinent part:

ESTABLISHING DISABILITY FOR SNAP

A. INTRODUCTION

Disabled means the individual is unfit to engage in full-time employment due to a physical and/or mental disability.

There are several different SNAP policies which require a determination of physical and/or mental disability. The way in which the disability is established varies, depending upon the policy for which the determination is being made. Some policies specify that only certain conditions establish disability. Others require a disability determination to be made by the Worker; this may be done with or without a physician's statement, depending upon the policy for which the determination is being made. The policies which require a disability determination are listed below, followed by a citation showing the location of the instructions for such determinations.

- Work Requirement policy in Section 13.2.A. Use item B or C below.

B. 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 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 59 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 (optional state supplementation to SSI payments) provided 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.

C. ESTABLISHING DIABILITY 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 physicians, 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 no durational requirement for which the condition must exist or be expected to exist.

3. Making The Determination

Once the necessary information is received, the Worker makes the determination of unfitness for employment based on the following guidelines:

- If the condition is one listed in Appendix C as a guideline for presumptively approving an AFDC-Related Medicaid case, disability is established. No durational time limits are imposed.
- Any other condition must impose limitations on the client's normal way of life to qualify him as unfit for employment. For example, a case of hypertension, requiring only a special diet and daily medication, does not substantially alter an individual's way of life, since eating is part of his daily routine, and taking medication does not significantly interrupt normal activities. However, a diagnosis of hypertension requiring dialing medication, special diet, frequent rest periods and avoidance of stress substantially limits a normal life style.

VIII. CONCLUSIONS OF LAW:

- 1) The issue for this hearing is whether the Department correctly applied a SNAP sanction against the Claimant's AG for her failure to register with BEP or provide evidence that she meets an exception to this policy. The Claimant raised no issue with income calculations or any other aspect of eligibility determinations.
- 2) Policy provides that all SNAP recipients are subject to a work requirement, unless exempt. Policy requires all mandatory individuals to register with BEP within 30 days of the date of original approval, and every twelve months thereafter. Failure to comply with this policy results in a sanction against the case. When this occurs the offending individual is removed from the SNAP 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.
- 3) The evidence is clear in that the Claimant is required to register with BEP and that she was properly notified of this requirement and her obligation to register within a certain timeframe. The notification also provided information regarding exemptions and the procedures for meeting an

exemption. The Claimant failed to comply with this requirement. Although she claims to have a medical condition which prevents her from registering, she failed to provide any such evidence prior to the Department's action.

- 4) The Department acted according to policy in applying the first violation sanction against the Claimant's AG, which resulted in termination of her SNAP due to a reduced assistance group and excessive income.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate the Claimant's SNAP eligibility effective February 1, 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of March, 2010.

**Cheryl Henson
State Hearing Officer**