



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

July 31, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 17, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your Supplemental Nutrition Assistance Program (SNAP) allotment for failure to register with the Bureau of Employment Programs.

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 is based on current policy and regulations. These regulations state that all non-WV WORKS individuals must comply with work requirements for participation in SNAP, unless an exemption is met. Individuals who fail to comply with the work requirements as found in policy are subject to a SNAP penalty (WV Income Maintenance Manual § 13.2).

The information submitted at your hearing revealed that you do not meet any exceptions found in policy to exempt you from complying with work requirements and were required to register with the Bureau of Employment Programs.

It is the decision of the State Hearing Officer to **Uphold** the proposal of the Department to reduce your SNAP benefits for failure to register with the Bureau of Employment Programs.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Michael Massaroni, Economic Service Supervisor

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1469

**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 ----- held on July 17, 2012, by phone. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources' Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed June 11, 2012.

It should be noted here that the Claimant's benefits under the SNAP have continued pending a decision.

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:

Michael Massaroni, Economic Service Supervisor

Presiding at the hearing was Kristi Logan, 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's proposal to reduce Claimant's SNAP benefits is correct.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 13.2, 13.5, 13.6 and 12.15

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Department's Summary
- D-2 Hearing Request received June 11, 2012
- D-3 Hearing/Grievance Request Notification
- D-4 Benefit Reduction Notification Letter dated June 12, 2012
- D-5 Bureau of Employment Programs Request Notification Letter dated February 21, 2012
- D-6 Case Comments (CMCC) from RAPIDS Computer System

Claimants' Exhibits:

- C-1 Claimant's Written Argument received July 6, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was receiving SNAP benefits for herself and her son. On February 21, 2012, the Department issued Claimant notification that she was required to register with the Bureau of Employment Programs (BEP) within thirty (30) days of the date of the letter to continue receiving SNAP benefits (D-5).
- 2) Claimant completed a SNAP review on June 8, 2012. Claimant had not registered with BEP as of June 2012 and a SNAP penalty was imposed against her. Claimant's caseworker advised her that the penalty could be lifted if she registered with BEP or provided a doctor's statement excusing her from work registration (D-6). Claimant failed to register with BEP or provide a doctor's excuse and her SNAP allotment was decreased effective July 2012.
- 3) Claimant chose not to appear at the scheduled hearing but submitted her argument in writing on July 6, 2012. Claimant argued that she has a disability claim pending with the Social Security Administration for a diagnosis of rheumatoid arthritis. Since rheumatoid arthritis is a listed impairment under federal guidelines, Claimant proposed

her pending disability status be presumptively approved, alleviating her from the requirement of registering with BEP or providing a doctor's excuse (C-1).

- 4) Michael Massaroni, Economic Service Supervisor, testified at the hearing that as of that date, Claimant had not registered with BEP nor had her disability claim with the Social Security Administration been approved. Claimant receives AFDC Related Medicaid based on the deprivation factor of absence. Claimant has not submitted any documentation that would exempt her from work registration.
- 5) WV Income Maintenance Manual § 12.15 A-B states:

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 making such determinations.

Work Requirement policy in Section 13.2. Use Establishing Disability Without A Physician's Statement or Establishing Disability With A Physician's Statement below.

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.

This includes, but is not limited to: RSDI, SSI, Workers' Compensation, Black Lung, Veteran's Administration, private insurance or sickness benefits, Medicaid based on incapacity, blindness or disability, including, but not limited to: SSI-related, M-WIN, HCB Waiver, I/DD Waiver and CDCS, etc. If receipt of any of these benefits do not clearly indicate disability, such as a low percentage disability for VA benefits, a physician's statement may still be required.

For RSDI and SSI purposes, being awarded these benefits (approved, but not yet receiving payment, withheld to repay, etc.) is the same as

receiving them. Being determined disabled by MRT, but not receiving Medicaid solely due to failure to meet a spenddown, still meets the requirement of establishing 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

If the disability of the surviving spouse or child of the veteran is obvious to the Worker, no verification is required, but the Worker must record his findings. If the disability is not obvious to the Worker, verification must be provided from a physician, licensed or certified psychologist, surgeon, doctor of osteopathy, chiropractor, or other medically-qualified individual.

- Recipients of federal, state or local government disability retirement, who receive such benefits due to one of the conditions specified above. This includes, but is not limited to, payments under Civil Service Retirement (CSR) and Federal Employee Compensation Act (FECA).

- 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

6) WV Income Maintenance Manual § 13.2 A (1) states:

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.

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.

Work Requirements

- Registration with WorkForce West Virginia. Details are in Section 13.5. Failure of an individual to register within the time limits found in Section 13.5, and each 12 months results in application of a penalty for not meeting the work requirement.

7) WV Income Maintenance Manual § 13.2 A(2) states:

The following SNAP recipients are exempt from the SNAP work requirements and are not subject to a SNAP penalty for failure to comply.

When any recipient loses eligibility for an exemption, the Worker must determine if the client meets any other exemption criteria prior to imposing a penalty.

- A person under age 16. Those who reach age 16, and lose this exemption, become subject to the SNAP work requirements at the next redetermination, unless exempt for some other reason.
- A person age 16 or 17 who is not the SNAP payee or RAPIDS primary person. Persons who lose this exemption become subject to the SNAP work requirements at the next redetermination, unless exempt for some other reason.
- A person age 16 or 17 who is attending school or enrolled in an employment training program on at least a half-time basis. Persons who lose this exemption become subject to the SNAP work requirements at the next redetermination, unless exempt for some other reason.
- A person enrolled at least half-time in any recognized school, recognized training program, or institution of higher education. If enrolled in an institution of higher education, the student must meet one of the exceptions to the restriction on student participation listed in Section 9.1. This exemption continues through normal periods of vacation, unless the person does not intend to register for the next term, excluding summer terms. Any person losing this exemption becomes

subject to the SNAP work requirements at the next redetermination, unless exempt for some other reason.

- A person age 60 or over.

- A parent, or other member of the AG [assistance group] who has the responsibility for the care of a child under the age of 6, or of an incapacitated and/or disabled individual. The person receiving the care is not required to reside with the AG or be a member of the SNAP AG. Unborn children are not considered children under the age of 6.

Separate families included in the same AG may have one person from each family exempted. Separate families, not in the same AG, but living together, may also have one person from each family exempted.

NOTE: An individual needed to care for an incapacitated person becomes subject to the SNAP work requirements within 10 calendar days after reporting a change, such as when the disabled person recovers or leaves the home. When an AG member is exempt because of the age of a child, and the child has his 6th birthday during the certification period, the individual becomes subject to the SNAP work requirements at the next regularly scheduled redetermination, unless exempt for some other reason.

- Individuals receiving UCI, as a result of registering with WorkForce West Virginia. This includes persons receiving benefits under the Trade Readjustment Act (TRA).

When a client reports the loss of UCI income, the Worker must evaluate the circumstances to determine if a penalty must be applied. A penalty is applied when the individual is exempt from SNAP work requirement due solely to the fact that the client was registered with WorkForce West Virginia, unless another exemption is met. Good cause for failure to comply with UCI requirements include all situations described in Section 13.3 for voluntarily quit.

If an individual's UCI benefits are suspended, he becomes subject to the SNAP work requirements 10 calendar days after the change is reported, unless a SNAP penalty is applied, or unless exempt for some other reason.

- 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.

- Regular participants in a drug addiction or alcoholic treatment and rehabilitation program, either on a resident or non-resident basis. Any person leaving the treatment program becomes subject to the SNAP work requirements 10 calendar days after the change is reported, unless exempt for some other reason.

- Individuals who are employed or self-employed and working a minimum of 30 hours per week, or receiving weekly earnings equal to the federal minimum wage multiplied by 30 hours. When the client is employed or self-employed for at least 30 hours per week, no consideration is given to the amount earned.

An employed person who is laid off, fired, goes on strike, quits or changes to employment of less than 30 hours per week, or ceases earning wages equal to the federal minimum wage multiplied by 30, becomes subject to the SNAP work requirements 10 calendar days after the change is reported, unless a SNAP penalty is applied or the client is exempt for some other reason.

- Individuals who receive WV WORKS and do not meet any of the other SNAP exemptions listed above, so long as they are subject to and complying with a WV WORKS work requirement. These individuals would be required to meet the SNAP work requirements if they did not receive WV WORKS. When an individual who is exempt only for this reason becomes exempt from WV WORKS work requirements, he is also considered exempt from SNAP work requirements. See Section 13.11 for the effect of a WV WORKS sanction on SNAP benefits.

8) WV Income Maintenance Manual § 13.6 A(2) states:

A non-WV WORKS recipient who refuses or fails to register with WorkForce West Virginia, 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. 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 for some reason other than UCI-related activities.

- Second violation: The individual is removed from the AG for at least an additional 6 months or until he meets an exemption, whichever is less.

If after the 6 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 for some reason other than UCI-related activities.

- Third and subsequent violations: The individual is 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 for some reason other than UCI-related activities.

VIII. CONCLUSIONS OF LAW:

- 1) Policy stipulates that for participation in SNAP, all individuals must cooperate with work requirements, unless certain exemptions are met. Individuals that fail or refuse to meet the work requirements in policy will be excluded from participation in SNAP.
- 2) Claimant was required to register with the Bureau of Employment Programs to continue participation in SNAP as she did not meet one of the exemptions listed in policy to meet the work requirement. Claimant refused to register with the Bureau of Employment Programs and a SNAP penalty was imposed on her assistance group.
- 3) Claimant contends her pending disability claim with the Social Security Administration for a diagnosis of rheumatoid arthritis should have exempted her from meeting the work requirements for SNAP. However, Claimant's claim has not been approved nor a disability determination been made either on a state or federal level. Claimant did not provide medical documentation of her condition or a doctor's statement exempting her from work requirements.
- 4) Without a disability determination by the Social Security Administration or a statement from a doctor verifying that Claimant has a disabling condition, the Department correctly imposed a SNAP penalty against Claimant's assistant group.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce Claimant's SNAP benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st day of July 2012

Kristi Logan
State Hearing Officer