



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

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

September 19, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 18, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your eligibility for Supplemental Nutrition Assistance Program [SNAP] benefits.

In arriving at a decision, the Deputy Director 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 benefits are based on current policy and regulations. Some of these regulations state that all mandatory individuals must register for employment with WORKFORCE WV/BEP within 30 days of the date of the original approval, unless exempt, and every twelve (12) months thereafter. Individuals who fail to register by the due date required are subject to a SNAP penalty of six (6) months for a second offense. If a recipient registers before the date the sanction is to begin, no penalty is imposed. (West Virginia Income Maintenance Manual §13.5, A, and 13.6, A, 2)

The information submitted at your hearing supports that you registered with WORKFORCE WV/BEP within the required timeframe.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in terminating your eligibility for SNAP benefits.

Sincerely,

Cheryl Henson
Deputy Director
State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Bonnie Wigal, ----- DHHR

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1836

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF DEPUTY DIRECTOR

I. INTRODUCTION:

This is a report of the Deputy Director resulting from a Fair Hearing for -----. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This hearing was convened on September 18, 2012.

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

Bonnie Wigal, Department representative

Presiding at the Hearing was Cheryl Henson, Deputy Director of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to terminate the Claimant's eligibility for SNAP benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 13.5 and 13.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated April 17, 2012
- D-2 Notice of Decision dated May 18, 2012
- D-3 Excerpts from West Virginia Income Maintenance Manual §13.2
- D-4 Excerpts from West Virginia Income Maintenance Manual §13.5
- D-5 Excerpts from West Virginia Income Maintenance Manual §13.6
- D-6 Verification of Claimant's registration date with Bureau of Employment Programs

VII. FINDINGS OF FACT:

- 1) The Claimant was receiving Supplemental Nutrition Assistance Program [SNAP] benefits during April 2012 when the Department sent him a Notice of Decision (D-1) informing him of a mandatory requirement that he register with the Bureau for Employment Programs [BEP] by May 16, 2012. The notice informed the Claimant that if he did not register by May 16, 2012, but prior to the end of the month in which the registration is due (May 2012), he must notify the local office.
- 2) On May 18, 2012, the Department determined that the Claimant had not registered with BEP, and sent him a second Notice of Decision (D-2) which included the following pertinent information:

ACTION: Your SNAP benefits will stop. You will not receive this benefit after May 2012.

REASON: Each individual has failed for the reasons stated below.

The following individuals are ineligible.

Individual failed to register with BEP.

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 2. ----- will remain ineligible for SNAP benefits FOR 6 MONTHS OR UNTIL COMPLIANCE, WHICHEVER IS LONGER

- 3) The Department contends that it acted correctly in applying a second-offense sanction against the Claimant. Bonnie Wigal, the Department's representative, is an Income Maintenance Worker in the ----- County, West Virginia, Department of Health and Human Resources (DHHR) office. She stated that she received notification during April 2012 that the Claimant was required to complete a twelve (12) month registration with BEP. She stated that she sent the Claimant two (2) Notice of Decision letters (D-1, D-2). She stated that she checked the computer system (Mid-Atlantic Career Consortium [MACC] System) on May 18, 2012, prior to sending the Claimant notice (D-2) informing him that he was being sanctioned for six (6) months beginning on June 1, 2012.
- 4) The Claimant stated that he believed at first that he needed to report to the BEP office in person to register, and was unable to do that because of transportation problems. He stated that he contacted the Department on or about May 31, 2012, and was informed that the registration could be done by telephone. He added that he registered by telephone prior to the end of May 2012.
- 5) The Department provided evidence (D-6) which supports that the Claimant registered with BEP on May 31, 2012; however, Ms. Wigal stated that the Claimant did not contact her to inform her that he registered with the program and she did not check the MACC computer system after May 18, 2012, and prior to the beginning date of the sanction (June 1, 2012) to determine if the Claimant had registered as required. She stated that after May 18, 2012, it was the Claimant's responsibility to notify the Department that he registered prior to the beginning of the sanction period.
- 6) The West Virginia DHHR's Income Maintenance Manual §13.5, A, 1, provides that all mandatory individuals must register for employment with WORKFORCE WV/BEP within 30 days of the date of the original approval, unless exempt according to Section 13.2. Recipients must also register every twelve (12) months thereafter, regardless of the length of time that BEP considers the registration valid. A recipient who fails to register by the due date established on the Department's notification letter is subject to a SNAP penalty. If the Worker discovers that the recipient registered anytime before the end of the month in which the adverse notice expires (in this case May 31, 2012), the penalty is not imposed and any lost benefits are restored.

EXAMPLE: A man reports on August 10th that his brother moved in with him and requests that he be added to the SNAP benefit. The brother is otherwise eligible and the Worker takes action on August 12th to add him to the SNAP benefit effective September 1st. The Worker sends a DFA-6 on August 12th to notify the brother that he is required to register with BEP by September 12th since he has not registered for SNAP purposes in the last 12 months.

The Worker is required to check an individual's status in the BEP MACC system:

- Prior to requesting that an individual register; or
- Prior to imposing a penalty; or
- When an individual reports he registered.

A recipient who fails to register by the due date established on the DFA-6 or verification checklist is subject to a SNAP penalty and the Worker must send an adverse action notice [Notice of Decision]. If the Worker discovers or the client notifies the Worker that he registered any time before the end of the month in which the adverse notice expires, the penalty is not imposed and any lost benefits are restored.

EXAMPLE: Using the example above, if the brother does not register by September 12th, the Worker must send notification that he is subject to a penalty beginning October 1st. *If he registers by September 30th, the penalty is not imposed. Any lost benefits are restored.* [Emphasis added]

The examples provided suggest that the worker has a responsibility to verify on the last day before the sanction period begins whether the individual has registered with BEP, and to take steps to remove the penalty and restore benefits if the individual has registered.

- 7) The West Virginia DHHR's Income Maintenance Manual §13.6, A, 2, provides that for a second violation, the individual is removed from the AG [assistance group] for at least an additional six (6) months, or until he meets an exemption, whichever is less. If after the six (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. The Claimant did not dispute that this is potentially his second violation and he did not claim an exemption.

VIII. CONCLUSIONS OF LAW:

- 1) Policy specifies that non-exempt individuals must register with BEP every twelve (12) months after SNAP approval, and that a second violation of this policy requires that a six (6) month sanction penalty be applied. The Claimant agreed that he was obligated to register with BEP and that a violation of this policy involved a potential second violation penalty.
- 2) The Department, by letter (D-1) dated April 17, 2012, required the Claimant to register with BEP prior to May 16, 2012, and required him to notify the Department if he registered after May 16, 2012, but prior to the end of the month in which registration was due (May 2012). A sanction was imposed on May 18, 2012, to begin on June 1, 2012, after the Department checked the MACC computer system and determined that the Claimant had not yet registered. The Claimant registered on May 31, 2012, but did not notify the Department that he had done so. The Department did not check the MACC computer system after May 18, 2012, and before June 1, 2012, to determine if the Claimant had registered during this timeframe.

- 3) The issue for this hearing is whether the Claimant fulfilled his obligation for registering on May 31, 2012, when he registered by phone with BEP, thus avoiding a sanction penalty.
- 4) Policy states that if the worker discovers or the Claimant reports that he has registered any time before the end of the month in which the adverse action notice expires (in this case May 31, 2012), the penalty is not imposed and any lost benefits are restored. Although this policy does not specify that the worker is responsible for checking the MACC computer system at the end of the month to determine if the individual has registered, examples provided in the same policy section suggest this to be the case. The examples state that if the individual registers by the end of the month the registration is required, in this case May 2012, the penalty is not imposed and benefits are restored. It would be necessary for the worker to check the MACC computer system on the last day of the month prior to start of the sanction in order to know whether this had occurred. There was nothing found in policy that requires an individual to also report to the Department that he has registered with BEP.
- 5) The totality of the evidence supports that the Claimant met his obligation for registering with BEP on May 31, 2012, and that a sanction should not have been imposed beginning June 1, 2012.
- 6) Based on the information provided during this hearing, the Department was not correct in its decision to apply a second violation penalty against the Claimant due to his failure to register with BEP within the required timeframe.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department in terminating the 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 19th Day of September 2012.

**Cheryl Henson
Deputy Director**