



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

January 11, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 4, 2012. Your hearing request was based on the Department of Health and Human Resources' action to decrease your Supplemental Nutrition Assistance Program (SNAP) benefits based on the imposition of a work sanction.

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.

SNAP eligibility is based on current policy and regulations. Some of these regulations state that a penalty is imposed when a non-exempt SNAP recipient fails to comply with a work requirement and does not have good cause. The minimum penalty must be served unless the client meets an exemption. For a first violation, the individual is removed from the Assistance Group for at least three months or until he meets an exemption, whichever is less. (West Virginia Income Maintenance Manual Section 13.6).

Information submitted at your hearing reveals that you failed to register with the Bureau of Employment Programs – or provide a physician's statement to establish your exemption from work requirements – in a timely manner. However, the Department failed to provide proper adverse action notification and your SNAP benefits were incorrectly reduced for October 2011.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to decrease your SNAP benefits for October 2011.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Tina Elza, ESW, DHHR

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

-----,

**Claimant,**

**v.**

**ACTION NUMBER: 11-BOR-2216**

**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. This fair hearing was convened via videoconference on January 4, 2012 on a timely appeal filed October 25, 2011 and received by the Hearing Officer on November 3, 2011. The hearing was originally scheduled for November 30, 2011, but was continued at the request of the Claimant. The hearing was then scheduled for December 20, 2011, but was continued at the request of the Claimant.

**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

Tina Elza, Economic Service Worker, WVDHHR

Matt Lockard, Economic Service Worker, WVDHHR

Pam Doughty, Economic Service Worker, WVDHHR

Presiding at the hearing was Pamela L. Hinzman, 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 took the correct action in decreasing the Claimant's SNAP benefits based on the imposition of a work requirement penalty.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Sections 13.2, 13.5 and 13.6

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Fair Hearing Request Form
- D-2 Notice sent to Claimant on July 11, 2011 requesting BEP registration
- D-3 Doctor's statement received by Department on October 13, 2011 (with pay stub and Section 8 Housing Assistance Payments Program information)
- D-4 Notice of Decision dated September 26, 2011
- D-5 Notice of Decision dated October 25, 2011
- D-6 Notice of Decision dated September 7, 2011
- D-7 Copy of WVDHHR Mental Disability/Incapacity Evaluation form (DFA-RT-3M)
- D-8 Medical information sent to Medical Review Team

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits.
- 2) On July 11, 2011, the Department sent the Claimant a notice (D-2) informing her that she must register with the Bureau of Employment Programs (BEP) by August 7, 2011, as she was a mandatory work registrant.
- 3) WVDHHR Economic Service Worker (ESW) Tina Elza testified that the Claimant failed to register with the BEP and a minimum three-month penalty was imposed on her SNAP case effective October 1, 2011. The Claimant was informed of the penalty - and the decrease in her SNAP allotment from \$526 to \$367 monthly - in a Notice of Decision dated September 26, 2011 (D-4).
- 4) ESW Elza testified that the Claimant provided a physician's statement (D-3) indicating that she was unable to work on October 13, 2011, along with her final pay stub from The Arc of Harrison County (dated May 2011) and Section 8 Housing Assistance Payments

Program information (dated August 2011). While the statement was signed by the physician in July 2011, ESW Elza indicated that there is no information in the Claimant's case record to verify that she had provided the statement to the Department prior to October 2011. The Claimant was placed back into the SNAP Assistance Group effective November 2011 as she became medically exempt from participation in SNAP work programs. The Claimant was notified of the subsequent increase in SNAP benefits in a Notice of Decision dated October 25, 2011 (D-5).

- 5) The Claimant testified that she had provided the physician's statement in July 2011, therefore, the Department should have had the exemption statement in its possession. In addition, the Claimant contended that she did not receive the Department's BEP registration request. The Claimant purported that she completed a telephone redetermination with ESW Pam Doughty last week, and contended that ESW Doughty told her she had located the doctor's statement submitted in July 2011. ESW Doughty, however, testified that she had not located verification that the document was submitted in July 2011. ESW Elza also maintained that the case record had been thoroughly searched and the information allegedly submitted in July 2011 was not located.
- 6) West Virginia Income Maintenance Manual Section 13.5, A states:

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...

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. If the Worker discovers or the client notifies the Worker that he registered anytime before the end of the month in which the adverse notice expires, the penalty is not imposed and any lost benefits are restored...

When an individual is added to the SNAP AG, or becomes subject to the SNAP work requirements due to the loss of an exemption listed below, he is required to register with BEP within 30 days of the date a DFA-6 or verification checklist (CMOB) is issued to the client, unless he has already registered for SNAP purposes within the past 12 months. See Section 13.2 for specific time requirements to complete registration.

#### SNAP EXEMPTIONS:

- caring for an incapacitated person,

- receipt of Unemployment Compensation,
- regular participation in a drug addiction or alcoholic treatment and rehabilitation program,
- employment, or
- receipt of WV WORKS.

7) West Virginia Income Maintenance Manual Section 13.6 states:

A SNAP penalty is imposed when the individuals listed below do not comply with a work requirement and do not have good cause...

A non-WV WORKS recipient who does not comply with the SNAP work requirements in Section 13.2-13.5 is subject to the following penalties.

The minimum penalty must be served unless the client meets an exemption. The penalty is never applied to an entire AG, only to the individual who does not comply. When the reported exemption ends, the client is subject to the original penalty, unless he has complied or meets another exemption...

A non-WV WORKS recipient who refused or fails to register with BEP, cooperate with FSE&T, 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 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) WVDHHR Common Chapters Manual Sections 710.14, B and C, address notification requirements for the Department. These requirements state, in pertinent part:

B. Timely Notice Requirement – Notice shall be mailed at least thirteen (13) days before the effective date of any action or decision, which may be adverse to the applicant or recipient.

C. Exceptions to Thirteen (13) Day Notice

1. When the applicant or recipient has waived his right to thirteen (13) day advance notice.
2. When a mass change is initiated, e.g., annual update of Food Stamp allotments or deductions, annual RSDI/SSI updates, change in the WV WORKS payment levels, and change in the medically needy income levels.
3. For Food Stamp cases only – When the benefit is terminated or reduced as a result of redetermination.

#### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy reveals that all non-WV WORKS recipients who are mandatory work registrants must register with WORKFORCE WV/BEP to maintain SNAP eligibility once every 12 months. If a mandatory work registrant fails to register with BEP, he is removed from the Assistance Group for three months or until he reports a change that makes him exempt. The minimum penalty must be served unless the client reports an exemption. Policy also stipulates that the Department is required to provide 13-day adverse action notification to a SNAP recipient.
- 2) While the Claimant maintains she provided a physician's statement in July 2011 to verify that she could not work, the Department's representatives testified that there is no documentation to indicate the statement was provided prior to October 13, 2011. However, the Department sent a Notice of Decision to the Claimant on September 26, 2011, informing her that her SNAP benefits would be decreased effective October 1, 2011 for failing to provide BEP registration. Therefore, the Claimant was not provided with proper adverse action notification.
- 3) Based on documentation and testimony offered during the hearing, the Department acted incorrectly in imposing a penalty on the Claimant's SNAP benefits for October 2011.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the action of the Department in decreasing the Claimant's SNAP benefits for October 2011 based on the imposition of a work penalty.

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 11th Day of January, 2012.**

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**Pamela L. Hinzman  
State Hearing Officer**