



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

November 16, 2012

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Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 8, 2012. Your hearing request was based on the Department of Health and Human Resources' action to terminate your Supplemental Nutrition Assistance Program (SNAP) benefits based on the imposition of a sanction/penalty.

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. Some of these regulations state that all mandatory individuals must register with BEP for employment within 30 days of the date of the original approval, unless exempt according to Section 13.2. A recipient who fails to register by the due date established on the ES-6 or verification checklist is subject to a SNAP penalty. Penalties are: First violation - The individual is removed from the Assistance Group (AG) for a minimum of 3 months. If non-compliance continues, the penalty continues until the failure or refusal stops, or until the individual reports a change that makes them exempt. Adequate notice of a Departmental decision affecting benefits, EBT adjustments, or nursing facility care shall be mailed, via first class mail, or provided in writing in a face-to-face contact, to the applicant or recipient (West Virginia Income Maintenance Manual §§13.2, 13.5, & 13.6, 7 CFR §273.7 Code of Federal Regulations and Common Chapters Manual §710.14)

The information submitted at your hearing reveals that the Department neither provided you with adequate notice regarding the BEP work registration requirement, nor the BEP penalty placed against your SNAP benefits.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to apply a SNAP penalty effective September 1, 2012.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Mark Paree, ESS, DHHR

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

----,

**Claimant,**

**v.**

**Action Number: 12-BOR-2347**

**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 telephonically on November 8, 2012, on a timely appeal filed October 10, 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  
Mark Paree, ESS, WVDHHR representative

Presiding at the hearing was Thomas Arnett, 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 action to terminate the Claimant's benefits by imposing a SNAP penalty.

#### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual §13.2, 13.5 and 13.6

7 CFR § 273.7 Code of Federal Regulations

WVDHHR Common Chapters Manual §710.14

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

- D-1 Case Comments for the period of 6/25/12 through 10/10/12
- D-2 Notice of Decision dated 6/26/12
- D-3 Notice of Decision dated 7/27/12
- D-4 Notice of Decision dated 10/11/12
- D-5 West Virginia Income Maintenance Manual §§ 13.2 and 13.5

#### **VII. FINDINGS OF FACT:**

- 1) On October 10, 2012, Claimant filed an appeal to contest Respondent's decision to deny his October 10, 2012 application for Supplemental Nutrition Assistance Program (SNAP) benefits pursuant to the Notice of Decision issued on October 11, 2012 (D-4).
- 2) Respondent presented evidence to indicate that Exhibit D-4 was issued to the Claimant because he had been placed in a SNAP Bureau of Employment Programs (BEP) work penalty, effective September 1, 2012, and was not eligible for SNAP until December 1, 2012. Respondent contends that the Claimant failed to comply with the directive to register with BEP, on or before July 25, 2012, pursuant to Exhibit D-2. In accordance with the WVDHHR Common Chapters Manual §710.16, Claimant's appeal was filed within 90 days of the July 27, 2012 SNAP BEP penalty notice. Therefore, this decision will address the initial imposition of the BEP penalty and eligibility for SNAP benefits retroactive to September 1, 2012.
- 3) Exhibit D-1 indicates that the Claimant was in Respondent's office on June 25, 2012, to inquire about a SNAP review form he had mailed to Respondent the previous week. The Claimant telephoned the Respondent's office later that same day and reported a change of address. According to Exhibit D-1, Claimant's mailing address was updated.

On June 26, 2012, Claimant was notified that he was required to register with BEP (D-2) and when it was determined he had not registered by July 25, 2012, he was notified via Exhibit D-3 that he was being placed in a SNAP BEP penalty.

- 4) The Claimant purported that he did not receive Respondent's notice advising that he was required to register with BEP (D-2) or the notice advising of the SNAP BEP penalty (D-3) because that information was sent to his old address (----). The Claimant indicated that when he telephoned Respondent's office on June 25, 2012, he changed his address to ----, and that Exhibit D-4 was the first correspondence he received at that address.
- 5) Respondent's representative provided testimony to indicate that he was unable to determine what address was entered in the Respondent's RAPIDS system on June 25, 2012. As a result, the Respondent was unable to confirm whether Exhibit D-2 and D-3 were sent to the correct address.
- 6) Policy found in the West Virginia Income Maintenance Manual §§ 13.2 and 13.5 provides that all mandatory individuals must register with BEP for employment within 30 days of the date of the original approval, unless exempt according to Section 13.2. They 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 ES-6 or verification checklist is subject to a SNAP penalty and the worker must send an adverse action notice. If the client registers anytime before the end of the month in which the adverse notice expires, the penalty is not imposed and any lost benefits are restored.
- 7) West Virginia Income Maintenance Manual, Chapter 13.6 states in part: A SNAP penalty is imposed when individuals do not comply with work requirements and do not have good cause. Penalties are: First violation: The individual is removed from the AG for a minimum of 3 months. If non-compliance continues, the penalty continues until the failure or refusal stops or until the individual reports a change that makes him exempt.

**NOTE:** 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.

- 8) West Virginia Common Chapters Manual §710.14.A, provides the requirements for adequate and timely notice of Department's decisions and states - Adequate notice of a Departmental decision affecting benefits, EBT adjustments, or nursing facility care shall be mailed, via first class mail, or provided in writing in a face-to-face contact, to the applicant or recipient.

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

- 1) The regulations that govern SNAP require recipients who are not exempt to register with BEP for employment within 30 days of the date of the original approval and every 12 months thereafter. Failure to comply with BEP registration results in a SNAP penalty unless good cause is established. Policy provides that adequate notice of Departmental decisions affecting benefits, EBT adjustments, or nursing facility care shall be mailed, via first class mail, or provided in writing in a face-to-face contact, to the applicant or recipient.

- 2) Respondent was unable to confirm the address reported by the Claimant and entered into its computer system on June 26, 2012. Claimant contends that he reported he moved to the ---- address, and it is clear that the notice advising Claimant of the BEP work registration requirement and subsequent notice of BEP penalty were sent to the ---- address. In the absence of evidence to the contrary, the Claimant was not provided adequate notice, as required by policy.

**IX. DECISION:**

The Department's action to apply a 3-month SNAP penalty effective September 1, 2012, is **reversed**.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_ Day of November 2012.**

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**Thomas E. Arnett**  
**State Hearing Officer**