



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

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

April 4, 2012

Dear ---- ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 29, 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. (West Virginia Income Maintenance Manual §§13.2, 13.5, & 13.6 and 7 CFR §273.7 Code of Federal Regulations)

The information submitted at your hearing reveals that you failed to register with BEP by the due date established on the verification request form.

It is the decision of the State Hearing Officer to **uphold** the action of the Agency to apply a 3-month SNAP penalty. The penalty began effective February 1, 2012.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Kimberly Donley, ESS, DHHR

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

---- ----,

Claimant,

v.

Action Number: 12-BOR-756

**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 on March 29, 2012 on a timely appeal filed February 14, 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

Kimberly Donley, 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:

WV Income Maintenance Manual §13.2, 13.5 and 13.6
7 CFR § 273.7 Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 Notice of Decision dated 12/12/11
- D-2 Notice of Decision dated 1/10/12
- D-3 WORKFORCE West Virginia - Activity for ---- ----
- D-4 WORKFORCE West Virginia – Contact Information for ---- ----
- D-5 West Virginia Income Maintenance Manual §13.2
- D-6 West Virginia Income Maintenance Manual §13.5

VII. FINDINGS OF FACT:

- 1) The Claimant was evaluated for Supplemental Nutrition Assistance Program (SNAP) benefits on December 9, 2011. On or about December 12, 2012, the Claimant was notified via a Notice of Decision (Exhibit D-1) that "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 notice goes on to advise the Claimant that he must register with BEP by January 8, 2012.

- 2) On or about January 10, 2012, the Claimant was notified (Exhibit D-2) that he was being placed in a 3-month SNAP penalty effective February 1, 2012 for failing to register with BEP.
- 3) The Department of Health and Human Resources, hereinafter Department, provided information to indicate that data secured from WORKFORCE West Virginia (Exhibit D-3) confirmed that the Claimant's last registration with BEP was in November 2010. The Department cited Exhibits D-3 and D-4 to demonstrate that the Claimant's registration with BEP was not completed until February 6, 2012.
- 4) The Claimant provided testimony to indicate he was told to register with BEP on the day of his SNAP application, but because he is reliant upon others for transportation and WORKFORCE West Virginia staff was out to lunch when he attempted to register, he was unable to complete registration on that date. The Claimant further purported that he did not receive Exhibit D-1 notifying him that he had to register by January 8, 2012 and noted that he has had some problems with receiving his mail. He reported that, on one occasion, someone smashed his mailbox with a baseball bat.

- 5) The Department contends it was unable to verify that the Claimant was having difficulty receiving his mail and because Departmental mail is not forwarded, any correspondence sent to the Claimant that was undeliverable would have been returned.
- 6) West Virginia Income Maintenance Manual, Chapter 13.5 states, in pertinent part, 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.

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. The individual is removed from the AG for a minimum of 3 months and if non-compliance continues, the penalty continues until the failure or refusal stops or until the individual reports a change that makes him exempt. 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.
- 2) Evidence submitted in this case reveals that the Claimant was verbally advised on the day of application he had to register with BEP and was sent correspondence three days later reminding him that BEP registration was required before January 8, 2012. The Claimant was provided a second notice on January 10, 2012 advising that SNAP benefits would terminate because he failed to register with BEP, yet he did not comply with registration requirements until February 6, 2012. While the Claimant's testimony regarding transportation and difficulty receiving his mail is compelling, the Department's correspondence was mailed to the address confirmed by him, and the notice letters were not returned as undeliverable by the U.S. Postal Service. It is the Claimant's responsibility to provide the Department with a secure mailing address to ensure he is compliant with SNAP participation requirements.

- 3) Based on the evidence, the Claimant has not provided good cause. Policy dictates that once a penalty is applied, the minimum penalty must be served unless an exemption is met. Although the Claimant has since complied with registration requirements, the 3-month SNAP penalty imposed effective February 1, 2012 must be served by the Claimant.

IX. DECISION:

The Department's action to apply a 3-month SNAP penalty is **upheld**. The penalty will remain in place for 3 months or until the Claimant meets an exemption.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this ____ Day of April, 2012.

**Thomas E. Arnett
State Hearing Officer**