



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313
(304) 746-2360, ext. 2227

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

September 17, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2960

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Donna L. Toler
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Tera Pendleton, Economic Service Worker

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

██████████,

Appellant,

v.

ACTION NO.: 15-BOR-2960

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

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer 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' (WV DHHR) Common Chapters Manual. This fair hearing was convened on September 16, 2015, on an appeal filed August 31, 2015.

The matter before the Hearing Officer arises from the July 22, 2015 decision by the Respondent to impose a three-month work requirement penalty on the Appellant resulting in a termination of the household's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Tera Pendleton, Economic Service Worker. The Appellant appeared *pro se*. The participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Case Comments computer screen print, dated June 10, 2015 through August 31, 2015
- D-2 Correspondence from DHHR ██████████ to the Appellant, dated June 11, 2015
- D-3 Correspondence from DHHR ██████████ to the Appellant, dated July 22, 2015
- D-4 SNAP Work Requirement Penalty Request computer screen prints, penalty August 2015 through October 2015
- D-5 Correspondence from DHHR ██████████ to the Appellant, dated August 25, 2015

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On June 11, 2015, the Department issued to the Appellant notice informing her that she and her daughter were required to register with WorkForce West Virginia (Workforce) by July 10, 2015. (Exhibit D-2)
- 2) The June 11, 2015 notice indicated that that the Appellant and her daughter were required to contact the local DHHR office if they were unable to work. The notice included an outline of specific reasons she and her daughter could be exempt from the registration as outlined in policy and included being physically or mentally unable to work. (Exhibit D-2)
- 3) On July 21, 2015, a Department worker completed a review of the Appellant's file and confirmed with electronic data received from Workforce that the Appellant and her daughter had failed to register with Workforce. (Exhibit D-1)
- 4) On July 22, 2015, the Department issued notice to the Appellant that because she and her daughter had failed to register with Workforce, SNAP work requirement penalties had been applied to the Assistance Group's SNAP benefits. The letter notified the Appellant that the sanction would remain for herself and her daughter a period of three (3) months or until they complied with the registration requirement, whichever was longer. The monthly SNAP benefits were terminated effective August 31, 2015. (Exhibit D-3)
- 5) On August 18, 2015, the Appellant provided verification which established that her daughter met a work requirement exemption. (Exhibit D-1)
- 6) On August 18, 2015, the Appellant provided verification that she had an active application for disability with the Social Security Administration. The Appellant has several medical conditions including gastroparesis, autoimmune disorder impacting her eyes and arthritis. (Exhibit D-1)
- 7) On August 24, 2015, the Department removed the work requirement penalty for the Appellant's daughter and approved SNAP benefits in the amount of \$194 per month, beginning September 2015. The work requirement penalty for the Appellant was not removed. (Exhibits D-1 and D-5)

- 8) At the time of the hearing request, the Appellant requested continued benefits, but the Department failed to reinstate the benefits as required by policy.
- 9) The Appellant registered with Workforce on September 10, 2015.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) §12.15, defines disability as an individual who is unfit to engage in full-time employment due to a physical and/or mental disability. Methods for establishing disability for the work requirement are outlined in WV IMM §13.2

WV IMM 13.2, outlines how a worker is to establish disability for the work requirement with and without a physician's statement. Disability can be established without a physician's statement if an individual is receiving benefits from a government or private source based on his/her own illness, injury or disability, and include individuals who are: a veteran with disability, rated or paid as total under Title 38 of the United States Code, a veteran or surviving spouse of a veteran considered to be in need of regular aid and attendance or is permanently homebound under Title 38 of the United States Code, a surviving child of a veteran incapable of self-support, statutory blindness (with restrictions), Intelligence Quotient of 59 or less (after age of 16), paraplegia or quadriplegia, multiple sclerosis (with restrictions), muscular dystrophy with irreversible wasting of muscles, impaired renal functioning, amputation (over 55), recipient of disability retirement, recipient of federally- or state-administered supplemental benefits under the Social Security Act, and recipients of annuity payments through the Railroad Retirement Act of 1974 (exclusions apply).

WV IMM §13.5.A.1, requires that all mandatory individuals register for employment with Workforce West Virginia within 30 days of the date of the original approval, unless exempt. Recipients are required to register every 12 months thereafter, regardless of the length of time that Workforce West Virginia considers the registration valid.

WV IMM §13.5.A.2, indicates that during the application and redetermination process, eRAPIDS will present a registration date obtained from WorkForce West Virginia. If the client is not registered, no date will be returned. During the certification period, the Worker may request the registration date through eRAPIDS. The client is only required to register with WorkForce West Virginia every 12 months for SNAP purposes. When the client is due to re-register, he must show activity to fulfill this requirement. The date of the re-registration is the date of the last action with WorkForce West Virginia or the due date of the re-registration, whichever is later

WV IMM §13.2.A.2, lists exemptions to the Bureau of Employment Programs registration requirement for SNAP. They are: 1) a person under age 16; 2) a person age 16 or 17 who is not the primary person or payee of the assistance group (AG); 3) a person who is 16 or 17 who is attending school or enrolled in an employment training program on at least a half-time basis; 4) a person enrolled at least half-time in any recognized school, training program or institution of higher education; 5) a person age 60 or older; 6) a parent or other member of the AG who has the

responsibility for the care of a child under six years old; 7) individuals who receive unemployment compensation; 8) individuals who are physically or mentally unfit to engage in full-time employment; 9) regular participants in drug addiction or alcoholic treatment and rehabilitation programs; 10) 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; 11) 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.

WV IMM Chapter §13.6.A.2, outlines SNAP work requirement penalties. Recipients who refuse or fail to register with Workforce West Virginia are 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 SNAP Assistance Group for at least 3 months or until he meets an exemption, whichever is later.

DISCUSSION

The Appellant acknowledged that she did not register with Workforce before the deadline date of July 10, 2015, or prior to the implementation of the sanction. She testified that on July 24, 2015, she was told by a Department worker that she should bring in the paperwork verifying she had an active application for disability with the Social Security Administration to establish an exemption from the work requirement. It is unknown who the Appellant spoke with, but policy clearly does not permit an exemption from the work requirement based upon having an active disability application with the Social Security Administration. During a telephone conversation, a Department worker advised the Appellant she could establish disability by providing a physician's statement. The Appellant testified that she was unable to get a statement from her physician in the time-frame required because her primary care physician no longer accepts Medicaid and she did not have time to make an appointment with another physician to obtain the requested verification. While policy permits a worker to establish an exemption without a physician's statement for certain medical conditions, none of the conditions suffered by the Appellant matched those outlined in policy.

The Appellant requested that her benefits be reinstated while awaiting a hearing decision in this matter. The Department failed to reinstate her benefits as requested. At the time of the hearing, the Appellant indicated that in the event of an unfavorable decision she would prefer not to have benefits reinstated for the month of September, adding she would like to serve the penalty period as soon as possible. Because the Appellant registered with Workforce in September 2015, action shall be taken by the Department to ensure she is added back into the SNAP AG beginning in December 2015, if otherwise eligible.

At the conclusion of the hearing, the Department's representative advised the Appellant that she may be able to establish disability by applying for SSI-Related Medicaid through the Medical Review Team. The Department's representative indicated that she would contact the Appellant following the hearing in the matter to provide her with additional information.

CONCLUSIONS OF LAW

- 1) The Appellant complied with SNAP work requirements as outlined in policy by registering with Workforce on September 10, 2015. However, because the Appellant failed to register with Workforce prior to the implementation of the work requirement penalty which began on September 1, 2015, the Department acted correctly to impose a work requirement penalty on the Appellant's SNAP benefits.
- 2) Because this is the Appellant's first violation of the work requirement, she is subject to a three (3) month SNAP penalty period for the months of September, October and November 2015.
- 3) Because the Appellant complied with the work requirement on September 10, 2015, she shall be reinstated into the SNAP AG effective December 1, 2015, if otherwise eligible.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to impose a work requirement penalty on the Appellant for failure to register with Workforce or meet an exemption. The work requirement penalty shall begin on September 1, 2015, and continue for a period of three (3) months.

ENTERED this 17th Day of September, 2015.

Donna L. Toler
State Hearing Officer