



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin  
Governor

BOARD OF REVIEW  
416 Adams St.  
Fairmont, WV 26554

Karen L. Bowling  
Cabinet Secretary

December 3, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-3450

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,

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

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

cc: [REDACTED], WVDHHR

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

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-3450**

**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' Common Chapters Manual. This fair hearing was convened on December 1, 2015, on an appeal filed November 9, 2015.

The matter before the Hearing Officer arises from the September 18, 2015 decision by the Respondent to terminate Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by ██████████, Economic Services Supervisor. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Decision dated 4/2/15
- D-2 Notice of Decision dated 9/18/15
- D-3 WVIMM §13.6
- D-4 Disability information provided by Appellant on October 1, 2015

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 April 2, 2015, Appellant was notified (Exhibit D-1) that as a condition of continued eligibility for Supplemental Nutrition Assistance Program (SNAP) benefits, she was required to register with WorkForce West Virginia by April 1, 2015 (the day prior to the date of notice).
- 2) As a matter of record, Respondent acknowledged that an administrative error occurred and that a subsequent notice (D-2) was not issued until September 18, 2015 advising Appellant that a second-level SNAP penalty was being imposed for failing to register with the Bureau of Employment Programs (BEP)/WorkForce West Virginia. The notice letter does not indicate when the penalty will be effective.
- 3) On October 1, 2015, Appellant submitted information via Electronic Mail (email), which has been identified as Exhibit D-4. According to Appellant, this documentation includes information to indicate she has been awarded a “disabled tag” by the West Virginia Department of Motor Vehicles and that she is waiting for a favorable determination from a Supplemental Security Income (SSI) application. However, the poor copy quality has rendered the documentation virtually illegible and Respondent argued that because the information was received after the second-level penalty was imposed (October 1, 2015), the SNAP penalty could not be removed.

## **APPLICABLE POLICY**

West Virginia Income Maintenance Manual § 13.5.1.A, provides that all mandatory individuals must register for employment with WorkForce West Virginia, within 30 days of the date of the original approval, unless exempt according to Section 13.2. Recipients must register every 12 months thereafter, regardless of the length of time that WorkForce West Virginia considers the registration valid. Actions which constitute a registration are defined by WorkForce West Virginia.

Once the client registers with WorkForce West Virginia for SNAP purposes, he cannot be required to register more often than every 12 months, even when the benefit is opened and closed within the 12-month period. This is tracked through RAPIDS.

Policy found in the West Virginia Income Maintenance Manual § 13.6.A.2, states that a non-WV WORKS recipient who refuses or fails to register with WorkForce West Virginia, 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 the work requirements. (See Section 13.2 for exemptions.)

- First violation: The individual is removed from the Assistance Group (AG) for at least 3 months or until he meets an exemption, whichever is later. 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 for some reason other than UCI-related activities.

- Second violation: The individual is removed from the AG for at least an additional 6 months or until he meets an exemption, whichever is later. If after the 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 according to Section 13.2 for some reason other than UCI-related activities.

-Third and subsequent violations: The individual is removed from the AG for at least an additional 12 months or until he meets an exemption, whichever is later. If after the 12 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 according to Section 13.2 for some reason other than Unemployment Compensation Insurance (UCI)-related activities.

West Virginia Income Maintenance Manual §13.2.A.1, provides that individuals who are physically or mentally unfit to engage in full-time employment are exempt from registration with WorkForce West Virginia and includes the following.

West Virginia Department of Health and Human Resources, Common Chapters Manual §710.14, includes the requirements for adequate and timely notice of Department's decisions, and provides as follows:

- A. 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 and must include the following information:
  1. The action or proposed action to be taken.
  2. The reason(s) for the action provided in terms readily understandable by the applicant or recipient and specifying all applicable policy manual sections.
  3. The right to a fair hearing and the time period for requesting a hearing as well as the circumstances under which assistance may be continued pending a hearing decision. An applicant or recipient should also be advised that he or she may be requested to refund any assistance rendered during the hearing process if the Hearing Officer upholds the Department's decision.
  4. Notice that a pre-hearing conference will be held for the applicant or recipient if he or she requests one in order to discuss the adverse action taken.
  5. An explanation that the applicant or recipient has the right:

- a. To be assisted by a person of the applicant's or recipient's choice, including legal counsel, at any pre-hearing conference and/or hearing; and
- b. To bring witnesses at the applicant's or recipient's own expense.

If an applicant or recipient identifies an attorney or representative that will be representing him or her, all communication shall be had with that attorney or representative.

6. A statement that the Department will assist the applicant or recipient, when necessary, in preparing for the fair hearing.

7. A list of the name, address and telephone number of any legal service organizations serving the area in which the applicant or recipient resides.

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.

### **DISCUSSION**

Pursuant to Common Chapters Manual, Respondent has failed to comply with proper and timely notification requirements. The initial notice issued on April 2, 2015, required that the Appellant register with WorkForce West Virginia (BEP) by April 1, 2015 - the day before the notice was issued. The second notice letter issued five (5) months later (September 18, 2015) does not include the date in which SNAP benefits would terminate, and further indicates that the Appellant would receive another notice informing her of the change in the amount of her benefits, or closure of her case. While the Appellant contended that she should be exempt from registering with BEP due to her disability, the illegible quality of the copies provided renders an affirmative decision impossible. As a result, SNAP benefits are reinstated effective October 1, 2015, and will continue pending proper notification that permits Appellant the opportunity to register with BEP or verify exemption status.

### **CONCLUSION OF LAW**

- 1) Pursuant to the West Virginia Department of Health and Human Resources Common Chapters Manual, Respondent's action to impose a second-level SNAP BEP penalty against the Appellant effective October 1, 2015, cannot be affirmed, as notification was neither timely, nor proper.
- 2) It is unclear if Appellant's medical condition meets the SNAP BEP exemption requirement. Once Appellant is properly notified of the SNAP BEP registration requirement, she will be required to comply with SNAP work requirements – register with BEP, or verify exemption status.

**DECISION**

It is the decision of the State Hearing Officer to REVERSE the Respondent's action to terminate Appellant's SNAP benefits and impose a second-level penalty effective October 1, 2015. SNAP benefits shall be reinstated effective October 1, 2015, and continue pending proper and timely notice that permits Appellant an opportunity to register with BEP or establish an exemption.

**ENTERED this \_\_\_\_ Day of December 2015.**

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**Thomas E. Arnett  
State Hearing Officer**