



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

**Bill J. Crouch**  
Cabinet Secretary

**Board of Review**  
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**Jolynn Marra**  
Interim Inspector  
General

October 5, 2020



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 20-BOR-2100

Dear Mr. [REDACTED]:

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

In arriving at a decision, the Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson, MLS  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

cc: Mark Mancino, [REDACTED] County DHHR

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

██████████,

**Appellant,**

**v.**

**ACTION NO.: 20-BOR-2100**

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on September 23, 2020 an appeal filed September 2, 2020.

The matter before the Hearing Officer arises from the July 30, 2020 determination by the Respondent to terminate the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Linda Kelly, ██████████ County DHHR. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

None

**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 following Findings of Fact are set forth.

## **FINDINGS OF FACT**

- 1) The Appellant was a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits for a one-person Assistance Group (AG).
- 2) On June 26, 2020, the Respondent issued a notice advising the Appellant that he was required to register with WorkForce West Virginia (WorkForce) by July 25, 2020.
- 3) On July 30, 2020, the Respondent issued notices advising the Appellant that his SNAP benefits would stop after August 31, 2020, and that he would be disqualified from participating in SNAP for three months because he failed to register with WorkForce.
- 4) Since January 27, 2020, a public health emergency has existed nationwide due to coronavirus disease 2019 (COVID-19).
- 5) The Appellant was unable to register in-person at his local WorkForce between June 26 and July 25, 2020 due to the WorkForce building being closed related to the COVID-19 public health emergency.
- 6) The Appellant did not have internet access between June 26 and July 25, 2020.
- 7) The Appellant was unable to register with WorkForce by phone between June 26 and July 25, 2020.
- 8) On May 5, 2020, a DHHR all staff memorandum was issued regarding WorkForce/ SNAP policy application for good cause during the COVID-19 public health emergency.
- 9) The May 5, 2020 memorandum instructed, “Good cause is warranted if the individual was unable to register for WorkForce due to a factor associated with the public health crisis, or if an individual does not have access to the internet.”
- 10) The May 5, 2020 memorandum provided that WorkForce registration was still mandatory and that SNAP recipients were required to register with WorkForce immediately after the end of the COVID-19 public health emergency.
- 11) The May 5, 2020 memorandum clarified that the Respondent would cease giving good cause for lack of WorkForce registration the month following the month the public health crisis has been lifted.
- 12) On August 27, 2020, a DHHR all staff memorandum was issued providing further policy clarification —effective September 1, 2020— for establishing good cause for not registering with WorkForce during Covid-19.

## **APPLICABLE POLICY**

### **West Virginia Income Maintenance Manual (WVIMM) §§ 14.2- 14.2.1.B SNAP Work Requirements and Exemptions provide in part:**

All SNAP clients are subject to a work requirement, unless exempt .... SNAP clients are required to complete registration with WorkForce West Virginia. Individuals who are physically or mentally unfit to engage in full-time employment are exempt from the registration requirement.

When a client loses eligibility for an exemption, the Worker must determine if the client meets any other exemption criteria prior to imposing a penalty.

## **DISCUSSION**

The July 30, 2020 notice advised the Appellant that his SNAP benefits would be terminated because he failed to register with WorkForce. The Appellant argued that his SNAP benefits should not be terminated or placed in a disqualification penalty period due to failure to register with WorkForce because he attempted to register but was unable to access WorkForce in-person, by telephone, or online. The Respondent argued that the Appellant was required by policy to register with Workforce prior to July 25, 2020 and failed to do so. Therefore, the Respondent argued that a disqualification penalty should be applied according to policy.

The Respondent bears the burden of proof and had to demonstrate by a preponderance of evidence that the Appellant was required to register with WorkForce and that he failed to register as required. Further, the Respondent had to prove that a three month SNAP disqualification penalty was correctly applied.

The Appellant argued that he attempted four times to register in-person at WorkForce—as he had done in previous years—but was unable to register because the building was closed due to the coronavirus disease 2019 (COVID-19) public health emergency. During the hearing, the Appellant testified that he had attempted to register by telephone three times but was unable to get through or leave a message. Testimony by the Respondent and Appellant reflected that the Appellant was able to register for WorkForce in September 2020 by telephone. The Appellant further testified that although he did not have internet access to complete his registration, he had his sister attempt to access the WorkForce website but she was unsuccessful. The Respondent did not present any evidence to refute the Appellant's assertion that the WorkForce office was closed, that he didn't have internet access, or that he was unable to access WorkForce by telephone between June 26 and July 25, 2020. The Respondent argued that the Appellant was required by policy to register by July 25, 2020 and because he failed to do so, his SNAP benefits were correctly terminated and the disqualification penalty was correctly applied.

The Board of Review is required to consider evidence and testimony entered during the hearing and all regulations and policies applicable to the issue at the time of the Respondent's July 30, 2020 actions to terminate the Appellant's SNAP benefits and implement a three-month SNAP

ineligibility penalty period. Declarations of public health emergencies made by the United States Secretary of the Department of Health and Human Services last for the duration of the emergency or ninety days, or may be renewed by the Secretary. On January 31, 2020, the Secretary of the Department of Health and Human Services (DHHS) made a declaration of determination that a public health emergency existed nationwide as a result of COVID-19. On April 2, April 21, and July 23, 2020, the Secretary of DHHS made a declaration of renewal of the determination that a public health emergency exists nationwide as the result of COVID-19. As October 21 is ninety days after July 23, 2020, the nationwide COVID-19 public health emergency was ongoing at the time the Respondent made the July 30, 2020 determination to terminate the Appellant's SNAP benefits and implement a three-month SNAP ineligibility penalty period.

The Respondent has a duty to provide equal and fair treatment of policy implementation. The DHHR all staff memorandum provided statewide DHHR staff with policy clarification for granting good cause for not registering with WorkForce during the COVID-19 public health emergency. Due process requires the Respondent to consistently apply policy to ensure that a client is not treated differently than other DHHR clients being granted good cause for the same issue.

The May 5, 2020 memorandum provided that good cause for not registering with WorkForce during the COVID-19 health emergency was warranted if the individual was unable to register for WorkForce due to a factor associated with the public health crisis or if the individual did not have access to the internet. Because the COVID-19 public health emergency was ongoing, WorkForce was inaccessible to the Appellant in person or by phone, and the Appellant did not have internet access between June 26 and July 25, 2020, the Respondent should have granted good cause to the Appellant. Therefore, the Respondent's application of a three month SNAP ineligibility penalty period against the Appellant was incorrect.

During the hearing, the Respondent testified that COVID-19 public health emergency-related good cause for not registering with WorkForce expired on August 31, 2020. However, the date of the August 31, 2020 WorkForce good cause expiration was not relevant at the time of the Respondent's July 30, 2020 decision regarding the Appellant's SNAP eligibility.

### **CONCLUSIONS OF LAW**

1. All recipients of Supplemental Nutrition Assistance Program (SNAP) benefits are required to register with WorkForce West Virginia (WorkForce) unless exempt.
2. Since January 27, 2020, a public health emergency has existed nationwide due to coronavirus disease 2019 (COVID-19).
3. Good cause for not registering with WorkForce is warranted if the Appellant was unable to register for WorkForce due to a factor associated with the COVID-19 public health emergency or if the Appellant did not have internet access.
4. Because the Appellant did not have internet access and was unable to register with WorkForce in-person or by telephone due to factors associated with the COVID-19 public

health emergency, the Appellant had good cause for not registering with WorkForce between June 26 and July 25, 2020.

5. As the preponderance of evidence established that the Appellant had good cause for not registering with WorkForce between June 26 and July 25, 2020, the Respondent's July 30, 2020 actions to terminate the Appellant's SNAP benefits and to initiate a three month SNAP disqualification penalty were incorrect.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's actions to terminate the Appellant's SNAP benefits and initiation of a SNAP disqualification penalty. If the Appellant's SNAP benefits were not continued during the pendency of the hearing, it is hereby **ORDERED** that the Respondent's SNAP benefits be issued retroactively to the date of termination.

ENTERED this 5<sup>th</sup> day of October 2020.

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**Tara B. Thompson, MLS**  
State Hearing Officer