



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Jeffrey H. Coben, MD
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

March 9, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1121

Dear [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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Travis Kinney, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 23-BOR-1121

**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 March 7, 2023.

The matter before the Hearing Officer arises from the decision by the Respondent to decrease Supplemental Nutrition Assistance Program (SNAP) benefits due to the imposition of a work program sanction.

At the hearing, the Respondent appeared by Travis Kinney, Economic Service Worker, WVDHHR. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████ the Appellant's husband. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Fair Hearing Request Form received by Respondent on January 23, 2023
- D-2 Notice advising ██████████ of SNAP Work Rules, dated September 15, 2022
- D-3 Notice of Decision (sanction letter) dated October 19, 2022
- D-4 Notice of Decision (SNAP reduction letter) dated October 19, 2022
- D-5 WorkForce West Virginia Registration information from Respondent's computer system
- D-6 Disability/Incapacity Medical Assessment received by Respondent on November 29, 2022

- D-7 Letter from [REDACTED], dated February 7, 2023, and diagnoses information
- D-8 West Virginia Income Maintenance Manual Chapter 13, Appendix C
- D-9 West Virginia Income Maintenance Manual Chapters 14.9.1.E, 14.9.1.F and 14.9.1.F.2
- D-10 SNAP Work Requirement Penalty Request information from Respondent's computer system

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) The Appellant is a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits.
- 2) On September 15, 2022, the Respondent sent the Appellant a Notice citing SNAP work program rules for [REDACTED] (Exhibit D-2).
- 3) [REDACTED] was required to register with WorkForce West Virginia by October 14, 2022.
- 4) On October 18, 2022, [REDACTED] was placed in a second work program penalty for failing to register with WorkForce West Virginia.
- 5) The Respondent sent the Appellant notice of the penalty on October 19, 2022 (Exhibit D-3).
- 6) The Respondent also notified the Appellant that his SNAP benefits would decrease from \$516 to \$281 per month effective November 1, 2022 as a result of [REDACTED] removal from the SNAP Assistance Group (Exhibit D-4).
- 7) [REDACTED] registered with WorkForce West Virginia on November 4, 2022, after the penalty period began.
- 8) The Respondent received a Disability/Incapacity Medical Assessment from the Appellant's medical provider on November 29, 2022, indicating that [REDACTED] had difficulty walking and standing for long periods of time due to back pain (Exhibit D-6).
- 9) The Disability/Incapacity Medical Assessment indicated that [REDACTED] disability/incapacity was expected to last three months, but that he could participate in

activities if given a break for 15 minutes every two hours so that he could sit and rest (Exhibit D-6).

- 10) The Respondent did not grant a work program exemption based on the November 29, 2022, assessment, and sent a second SNAP decrease letter to the Appellant on December 19, 2022.
- 11) The Appellant submitted a letter from [REDACTED] psychiatrist on February 8, 2023, which lists several diagnoses including Attention Deficit/Hyperactivity Disorder, Gender Dysphoria, Moderate Recurrent Major Depression, and Panic Disorder with Agoraphobia. The letter states that [REDACTED] regularly experiences difficulties with executive functioning, inattention, emotional regulation, social interactions, impulsivity and reactivity (Exhibit D-7).
- 12) The Respondent's computer system listed a first sanction for [REDACTED] effective September 2021 for failing to register with WorkForce. However, [REDACTED] was granted good cause for failing to register prior to the imposition of that penalty. The compliance date was August 25, 2021 (Exhibit D-10).
- 13) The sanction imposed in November 2022 is [REDACTED] first work program sanction.

APPLICABLE POLICY

Code of Federal Regulations 7 CFR §273.7 describes work requirements for SNAP benefits:

(a) Work requirements

(1) As a condition of eligibility for SNAP benefits, each household member who is not exempt under paragraph (b)(1) of this section must comply with the following SNAP work requirements:

(i) Register for work or be registered by the State agency at the time of application and every 12 months after initial registration. The member required to register need not complete the registration form.

(ii) Participate in a Food Stamp Employment and Training (E&T) program if assigned by the State agency, to the extent required by the State agency;

(iii) Participate in a workfare program if assigned by the State agency;

(iv) Provide the State agency or its designee with sufficient information regarding employment status or availability for work;

(v) Report to an employer to whom referred by the State agency or its designee if the potential employment meets the suitability requirements described in paragraph (h) of this section;

(vi) Accept a bona fide offer of suitable employment, as defined in paragraph (h) of this section, at a site or plant not subject to a strike or lockout, at a wage equal to the higher of the Federal or State minimum wage or 80 percent of the wage that

would have governed had the minimum hourly rate under section 6(a)(1) of the Fair Labor Standards Act been applicable to the offer of employment.

(vii) Do not voluntarily and without good cause quit a job of 30 or more hours a week or reduce work effort to less than 30 hours a week, in accordance with paragraph (j) of this section...

(3) Each State agency will determine the meaning of any other terms used in paragraph (a)(1) of this section; the procedures for establishing compliance with SNAP work requirements; and whether an individual is complying with SNAP work requirements. A State agency must not use a meaning, procedure, or determination that is less restrictive on SNAP recipients than is a comparable meaning, procedure, or determination under the State agency's program funded under title IV-A of the Social Security Act.

(c)State Agency Responsibilities

(1)(i) The State agency must register for work each household member not exempted by the provisions of paragraph (b)(1) of this section. The State agency must permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a)(1)(i) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State agency.

(ii) During the certification process, the State agency must provide a written notice and oral explanation to the household of all applicable work requirements for all members of the household and identify which household member is subject to which work requirement. These work requirements include the general work requirement in paragraph (a) of this section, mandatory E&T in paragraph (a)(1)(ii) of this section, and the ABAWD work requirement at §273.24. The written notice and oral explanation must be provided in accordance with (c)(1)(iii) of this section. This written notice and oral explanation must also be provided to the household when a previously exempt household member or a new household member becomes subject to these work requirements, and at recertification.

(iii) The consolidated written notice must include all pertinent information related to each of the applicable work requirements, including: An explanation of each applicable work requirement; which individuals are subject to which work requirement; exemptions from each applicable work requirement; an explanation of the process to request an exemption (including contact information to request an exemption); the rights and responsibilities of each applicable work requirement; what is required to maintain eligibility under each applicable work requirement; pertinent dates by which an individual must take any actions to remain in compliance with each applicable work requirement; the consequences for failure to comply with each applicable work requirement; an explanation of the process for requesting good cause (including examples of good cause circumstances and contact information to initiate a good cause request); and any other information the State agency believes would assist the household members with compliance.

(f)(2) Disqualification periods. The following disqualification periods will be imposed:

(i) For the first occurrence of noncompliance, the individual will be disqualified until the later of:

(A) The date the individual complies, as determined by the State agency; (B) One month; or (C) Up to three months, at State agency option.

(ii) For the second occurrence, until the later of: (A) The date the individual complies, as determined by the State agency; (B) Three months; or (C) Up to six months, at State agency option. **(iii)** For the third or subsequent occurrence, until the later of:

(A) The date the individual complies, as determined by the State agency; (B) Six months; (C) A date determined by the State agency; or (D) At the option of the State agency, permanently.

West Virginia Income Maintenance Manual Chapter 14.2.1.A states that all SNAP applicants/recipients are subject to a work requirement, unless exempt.

West Virginia Income Maintenance Manual Chapter 14.3.1.A states that all individuals must register for employment with WorkForce West Virginia within 30 days of the date of the original SNAP approval unless exempt. Clients must register every 12 months thereafter, regardless of the length of time that WorkForce West Virginia considers the registration valid. A client may register by visiting a WorkForce West Virginia office or may register online.

A client who fails to comply by the due date established on the notice to register is subject to a SNAP penalty and the Worker must send an adverse action notice. See Section 14.5. The penalty is not imposed, and any lost benefits are restored if, before the end of the month in which the adverse notice expires, the following occurs:

- The client registers; and
- The client notifies the Department of Health and Human Resources (DHHR) that he has registered. If the Worker independently discovers before the penalty goes into effect that the client has registered before the end of the month in which the adverse notice expires, the penalty may be lifted, and benefits restored. There is no requirement on the Department, however, to attempt to independently verify if the client has registered after the date the penalty is entered into the system.

Chapter 14.5.1.B of the Manual states that a client 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 the full penalty period or until he or she reports a change which makes him/her exempt from work requirements.

Chapter 14.5.1.B states that for the first work program violation, the individual is removed from the SNAP Assistance Group for at least three months or until he or she meets an exemption. If after three months, the client has not complied or met an exemption, the penalty continues until he does comply or meets an exemption for some reason other than UCI-related activities. For a second work program violation, the individual is removed from the SNAP Assistance Group for at least six months or until he or she meets an exemption.

Chapter 14.2.1.B states that the following clients are exempt from SNAP work requirements and are not subject to a SNAP penalty for failure to comply:

- A person under age 16.
- A person age 16 or 17 who is not the SNAP payee or primary person.
- A person age 16 or 17 who is attending school or enrolled in an employment training program on at least a half-time basis.
- A person enrolled at least half-time in any recognized school, recognized training program, or institution of higher education. If enrolled in an institution of higher education, the student must meet one of the exceptions to the restriction on student participation listed in Section 3.2. This exemption continues through normal periods of vacation, unless the person does not intend to register for the next term, excluding summer terms.
- A person age 60 or over.
- A parent, or other member of the AG who has the responsibility for the care of a child under the age of six, or of an incapacitated and/or disabled individual. The person receiving the care is not required to reside with the AG or be a member of the SNAP AG. Unborn children are not considered children under the age of six. Separate families included in the same AG may have one person from each family exempted. Separate families, not in the same AG, but living together, may also have one person from each family exempted.
- Individuals receiving Unemployment Compensation Insurance (UCI) from any state. This includes persons receiving benefits under the Trade Readjustment Allotment (TRA). If an individual's UCI benefits are suspended, he becomes subject to the SNAP work requirements when the change is reported, unless a SNAP penalty is applied, or unless exempt for some other reason. When a client reports the loss of UCI income, the worker must evaluate the circumstances to determine if a penalty must be applied. A penalty is applied when the individual is exempt from SNAP work requirements due solely to the fact that the client was receiving UCI, unless another exemption is met. Good cause for failure to comply with UCI requirements include all situations described in Section 14.4 for voluntary quit.
- Individuals who are physically or mentally unfit to engage in full-time employment. See Section 13.15.

- Regular participants in a drug addiction or alcoholic treatment and rehabilitation program, either on a resident or non-resident basis. Regular participation is defined by the drug addiction or alcoholic treatment and rehabilitation program.
- Individuals who are employed or self-employed and working a minimum of 30 hours per week, or who are receiving weekly earnings equal to the federal minimum wage multiplied by 30 hours. When the client is employed or self-employed for at least 30 hours per week, no consideration is given to the amount earned.
- 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. These individuals would be required to meet the SNAP work requirements if they did not receive WV WORKS.

Chapter 13.15.3 of the Manual addresses how a client can be determined unfit for employment for SNAP purposes:

- A client who meets the definition of disability is considered to be unfit for employment. No other verification is needed.
- A client who does not meet the definition of disability should be evaluated for fitness for employment. If it is obvious to the worker that the client is unfit for employment, then no further verification is needed, but thorough case comments must be entered explaining why the client is obviously unfit for employment.
- A client who does not meet the definition of disability and is not obviously unfit for employment will be requested to provide written verification from a licensed medical professional that the client is unfit for employment.
- Chronically Homeless Populations

DISCUSSION

Policy states that all SNAP applicants/recipients are subject to a work requirement, unless exempt. A non-WV WORKS recipient who refuses or fails to register with WorkForce West Virginia is subject to a penalty for the full penalty period or until he or she reports a change that makes him/her exempt from work requirements. In order to meet a work requirement exemption, a client who does not meet the definition of disability and is not obviously unfit for employment will be requested to provide written verification from a licensed medical professional that the client is unfit for employment.

██████████ did not register with Workforce West Virginia until November 4, 2022, after a work penalty was imposed. Travis Kinney, Economic Service Worker (ESW) with the Respondent, testified that the Respondent received a Disability/Incapacity Medical Assessment for ██████████ on November 29, 2022, indicating that ██████████ could participate in

activities if given a 15-minute break every two hours. Therefore, the Respondent was not granted an exemption from work requirements and the work penalty remained in place.

The Appellant and [REDACTED] addressed [REDACTED] psychiatric issues, including Attention Deficit/Hyperactivity Disorder and panic disorder with agoraphobia. They indicated that [REDACTED] does not like to leave his residence and has difficulty perceiving the passage of time. [REDACTED] testified that he also has severe osteoarthritis and has difficulty sitting for long periods. [REDACTED] stated that he receives some income from designing tabletop role-playing games, but no verification of self-employment or income was provided during the hearing.

It is clear that [REDACTED] would encounter challenges with certain types of employment due to his physical and mental health conditions. However, the statement provided by his physician in November 2022 indicates that he could participate in activities if given breaks every two hours. Therefore, the statement does not warrant an exemption from SNAP work requirements. The letter provided by [REDACTED] psychiatrist in February 2023 also lists several diagnoses that could prove problematic to employment; however, that letter does not indicate that the conditions prohibit [REDACTED] from employment. ESW Kinney stated that the psychiatrist could complete the Disability/Incapacity Medical Assessment form for [REDACTED] to provide additional details.

Based on information provided during the hearing, the Respondent's decision to impose a sanction on the Appellant's SNAP benefits is correct. However, the sanction imposed in November 2022 is the Appellant's **first sanction** since [REDACTED] was granted good cause prior to imposition of the 2021 sanction and the 2021 penalty was never imposed. As a first sanction results in a three-month SNAP penalty, the correct sanction period is November 2022 through January 2023. The sanction details should be corrected in the Respondent's computer system and the penalty should be removed effective February 1, 2023, since [REDACTED] has since complied with WorkForce registration requirements.

CONCLUSIONS OF LAW

- 1) Policy stipulates that a non-WV WORKS recipient who refuses or fails to register with WorkForce West Virginia is subject to a penalty for the full penalty period or until he or she reports a change that makes him/her exempt from work requirements.
- 2) In order to meet a work requirement exemption, a client who does not meet the definition of disability and is not obviously unfit for employment will be requested to provide written verification from a licensed medical professional that the client is unfit for employment.
- 3) [REDACTED] was required to register with WorkForce West Virginia by October 14, 2022.
- 4) [REDACTED] failed to register with WorkForce West Virginia, and a work penalty was applied effective November 1, 2022.

- 5) [REDACTED] registered with WorkForce West Virginia on November 4, 2022, after the work program sanction had been imposed.
- 6) Medical documentation provided for [REDACTED] fails to establish incapacity or disability for SNAP work program purposes.
- 7) The Respondent's decision to impose a work penalty on the Appellant's SNAP benefits effective November 2022 based on failure to register with Workforce West Virginia is correct.
- 8) The penalty imposed by the Respondent is a first sanction (three months) beginning November 1, 2022, through January 31, 2023.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Respondent's action to decrease SNAP benefits and impose a work penalty effective November 2022. As the penalty is a first sanction, the penalty period is November 2022 through January 2023. The penalty shall be removed effective February 1, 2023, and the case shall be assessed retroactively.

ENTERED this 9th day of March 2023.

**Pamela L. Hinzman
State Hearing Officer**