



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

**Jeffrey H. Coben, M.D.
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

June 29, 2023

[REDACTED]

Re: [REDACTED] v WV DHHR
ACTION NO.: 23-BOR-1751

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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

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

cc: Jamey Biesczad, WV DHHR, [REDACTED]

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

IN THE MATTER OF:

ACTION NO.: 23-BOR-1751

██████████,

Appellant,

v.

**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 June 07, 2023, on an appeal filed May 09, 2023.

The matter before the Hearing Officer arises from the April 18, 2023 determination by the Respondent to apply a twelve (12) month sanction, thereby, terminating the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Jamey Biesczad, Economic Service Worker, DHHR. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV DHHR Notice of Decision, dated April 18, 2023
- D-2 WV PATH eligibility system printout of Case Comments, dated February 08, 2023 through May 17, 2023
- D-3 WV DHHR Notice of Decision – Work Requirement Penalty, dated April 18, 2023
- D-4 WV PATH eligibility system printout of Case Comments, dated October 13, 2022 through May 17, 2023; and WV PATH eligibility system printout of WorkForce WV Registration for ██████████, dated May 09, 2023
- D-5 West Virginia Income Maintenance Manual (WVIMM) §§ 14.3.1 - 14.3.1.B, 14.5.1 - 14.5.2

Appellant's Exhibits:

- A-1 Telephone Screenshot, dated January 03, 2023

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 was a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits. (Exhibits D-1 through D-5)
- 2) On an unknown date, November 2022, the Respondent issued a notice to the Appellant advising her of the need to register with WorkForce West Virginia (WorkForce) or meet an exemption and notify the Department of Health and Human Resources (DHHR) by an unknown date in December 2022.
- 3) On April 17, 2023, the Respondent received a computer-generated alert that the Appellant failed to register with WorkForce. (Exhibit D-2)
- 4) On April 18, 2023, the Respondent issued two additional notices of decision to the Appellant informing her that effective May 01, 2023, a third SNAP work requirement penalty would be applied to her benefits for failure to register with WorkForce or meet an exemption. The notices informed the Appellant that she would remain ineligible for SNAP benefits for a period of twelve (12) months or until she complied with the registration requirement, whichever was longer. (Exhibits D-2 through D-4)
- 5) On May 01, 2023, the Appellant's SNAP benefits were terminated due to failure to register with WorkForce or meet an exemption prior to the established deadline. (Exhibits D-2 through D-4)
- 6) The Appellant registered with WorkForce on May 09, 2023. (Exhibits D-2 and D-4)
- 7) The Appellant failed to register with WorkForce or meet an exemption prior to the December 2022 deadline. (Exhibits D-2 and D-4)
- 8) This is the Appellant's third violation of the SNAP work requirement. (Exhibit D-4)

APPLICABLE POLICY

Code of Federal Regulations (CFR) §273.7 provides, in part:

(a) Work requirements

(1) As a condition of eligibility for SNAP benefits, each household member 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.

(b) Exemptions from work requirements

(1) The following persons are exempt from SNAP work requirements:

(ii) A person physically or mentally unfit for employment. For the purposes of this paragraph (b), a State agency will define physical and mental fitness; establish procedures for verifying; and will verify claimed physical or mental unfitness when necessary. However, the State agency must not use a definition, procedure for verification, or verification that is less restrictive on SNAP recipients than a comparable meaning, procedure, or determination under the State agency's program funded under title IV-A of the Social Security Act.

(iii) A person subject to and complying with any work requirement under title IV of the Social Security Act. If the exemption claimed is questionable, the State agency is responsible for verifying the exemption.

(c) State agency responsibilities

(1) State agency responsibilities

(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 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) Failure to comply

(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 (WVIMM) 3.2.1.A Who Must Be Included provides, in part:

The SNAP AG must include all eligible individuals who both live together and purchase food and prepare meals together, with the exception of residents of shelters for battered persons.

WVIMM § 7.2.3 Client Responsibilities provides, in part:

The primary responsibility for providing verification rests with the client. It is an eligibility requirement that the client cooperate in obtaining necessary verifications, with an exception being that a client must never be asked to provide verification that he is or is not either a fleeing felon or a probation/parole violator. The client is expected to provide information to which he has access and to sign authorizations needed to obtain other information. Failure of the client to provide necessary information or to sign authorizations for release of information results in denial of the application or closure of the active case, provided the client has access to such information and is physically and mentally able to provide it.

Refusal to cooperate, failure to provide necessary information, or failure to sign authorizations for release of information, provided the client has access to such information and is physically and mentally able to provide it, may result in one of the following:

- Denial of the application
- Closure of the assistance group (AG)
- Determination of ineligibility
- Disallowance of an income deduction or an incentive payment

WVIMM § 10.4.2.B.1 Sources of Information Verified upon Receipt provides, in part:

Action must be taken for all AGs when information is received from a source that is considered verified upon receipt. Verified upon receipt sources are not subject to independent verification and the provider is the primary source of the information. The only sources considered verified upon receipt are:

- Unemployment Compensation (UC) and work registration data from WorkForce

West Virginia

- Investigations and Fraud Management (IFM) findings of an investigation
- Notification of application for benefits in another state
- Report from Social Service Worker
- Child Welfare Information System Provider and Client Detail Data Exchanges
- Housing and Urban Development (HUD)
- State On-Line Query (SOLQ)

WVIMM § 14.2 General SNAP Work Requirements and Exemptions provides, in part:

All SNAP clients are subject to a work requirement unless exempt.

WVIMM § 14.3.1.A Registration Requirements provides, in part:

All individuals must register for employment with WorkForce West Virginia, within 30 days of the date of the original approval, unless exempt according to Section 14.2. Clients 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 and the eligibility system must:

- Match with WorkForce West Virginia. Registration date updated.
- Match the date returned from WorkForce West Virginia is more than 12 months old. The client must register again.
- Match with WorkForce West Virginia with inactive job status and no job preference. The client must choose a job preference and become active to be considered registered.
- Match with WorkForce West Virginia with inactive job status and with job preference. The client must become active to be considered registered.
- Match with WorkForce West Virginia with active job status and no job preference. The client must choose a job preference to be considered registered.

Once the client registers with WorkForce West Virginia for Supplemental Nutrition Assistance Program (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 the eligibility system.

The client may register by visiting a WorkForce West Virginia office, or by registering online. The Worker must explain these requirements to the client and enter the registration date in the eligibility system.

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. The penalty is not imposed, and any lost benefits are restored if, before the end of the month in which adverse notice expires, the following occurs: the client registers with WorkForce WV, the individual notifies the DHHR that he or she has registered. If the worker discovers the registration before the penalty goes into effect that the client has registered before the end of the month which the adverse

action expires, the penalty may be lifted, and benefits restored.

WVIMM § 14.3.1.B WorkForce WV provides, in part:

During the application and redetermination process, the eligibility system will present a registration date obtained from WorkForce WV. If the client is not registered, no date will be returned. During the certification period, the worker may request the registration date through the eligibility system. 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 WV or the due date of the re-registration, whichever is later.

WVIMM § 14.5 SNAP Work Requirement Penalties provides, in part:

A SNAP penalty is imposed when clients do not comply with a work requirement and do not have good cause. When determining the correct number of penalties, the Worker must look at the total number of penalties previously served, not just the number of penalties for each work requirement.

The penalty must be served unless the client meets an exemption. The penalty is never applied to an entire AG, only to the client 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.

WVIMM § 14.5.1.B Non-Voluntary Quit Penalties provides, in part:

An individual who refuses or fails to register with WorkForce WV is subject to the following penalties for the full penalty period or until he or she reports a change which makes him or her exempt from the work requirements. For a third violation, the individual is removed from the SNAP AG for at least twelve (12) months or until he meets an exemption, whichever is later.

DISCUSSION

The Respondent bears the burden of proof to establish that action taken against the Appellant was in accordance with policy. The Respondent had to prove by a preponderance of evidence that the Appellant's SNAP benefits were correctly terminated, and a third sanction applied based on the Appellant's non-compliance with the WorkForce registration requirement. Pursuant to policy, an individual must register with WorkForce yearly as a condition of eligibility to receive SNAP benefits, unless an exemption is met. If an individual fails to register with WorkForce by the due date listed on the registration request letter, but registration is completed prior to the effective date of the SNAP penalty and the Respondent is notified of the registration, the penalty may be removed.

The Respondent testified that on an unknown date, November 2022, the Department issued a notice advising the Appellant of her need to register with WorkForce, or meet an exemption, by an unknown date in December 2022. On April 17, 2023, after receiving a computer-generated

alert informing the Department of the Appellant's failure to register with WorkForce, the Respondent issued two additional notices advising the Appellant that effective May 01, 2023, a third SNAP work requirement penalty would be applied. The notices informed the Appellant that she would remain ineligible for SNAP benefits for a period of twelve (12) months or until she complied with the registration requirement, whichever was longer.

The Appellant did not dispute the Department's testimony or deny receiving the November and December 2022 notices. Instead, she testified that on January 03, 2023, she attempted to register for WorkForce via telephone and provided a screenshot of a five (5) minute phone call as evidence. However, when questioned about the call, the Appellant could not recollect any details or remember if she was informed that her registration was thoroughly completed.

Pursuant to policy, an individual must register with WorkForce yearly as a condition of eligibility to receive SNAP benefits, unless an exemption is met. If an individual fails to register with WorkForce by the due date listed on the registration request letter, but registration is completed prior to the effective date of the SNAP work requirement penalty, and the Respondent is notified, the penalty may be removed. Because no evidence or testimony was provided that the Appellant met an exemption, and because the Appellant failed to register with WorkForce until May 09, 2023, after the May 01, 2023 effective date of the SNAP work requirement penalty, the Respondent acted in accordance to the policy to impose a third SNAP work requirement penalty, thereby terminating the Appellant's SNAP benefits.

CONCLUSIONS OF LAW

- 1) The Appellant was required to comply with SNAP work requirements by either registering with WorkForce or meeting an exemption no later than December 2022.
- 2) Because the Appellant failed to register with WorkForce or meet an exemption for SNAP purposes by the established deadline, a third work requirement penalty must be applied to the Appellant's SNAP benefits.
- 3) Because the penalty against the Appellant is a third offense, the Appellant is ineligible for SNAP benefits for a period of twelve (12) months.
- 4) Because the Appellant failed to complete her WorkForce registration prior to the May 01, 2023 SNAP penalty imposition, the penalty cannot be removed.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to terminate the Appellant's monthly SNAP benefits effective May 1, 2023.

ENTERED this _____ day of June 2023.

Angela D. Signore
State Hearing Officer