



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 11, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 10, 2008. Your hearing request was based on the Department of Health and Human Resources' action to deny your applications for Emergency Assistance and the Low Income Energy Assistance Program (LIEAP).

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.

Eligibility determinations for Emergency Assistance and LIEAP are based on current policy and regulations. Some of these regulations state that an Emergency Assistance application is denied when countable household income exceeds the income limit for the Assistance Group size. When home heating service has been terminated and the account has been closed prior to the date of a LIEAP application, the household is only considered vulnerable for heating costs if the supplier agrees to restore service upon the approval of LIEAP or in combination with other payments. Payments for portable heating devices are discouraged due to safety concerns and can only be approved in emergent situations at a supervisor's discretion. (West Virginia Income Maintenance Manual Sections 19.2 and 26.2)

Information submitted at your hearing reveals that your Emergency Assistance application was denied because your household income is excessive for a two-person Assistance Group. Your LIEAP application was denied because the amount of your LIEAP payment would be insufficient to restore your electrical service and your kerosene space heater is unsafe.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your applications for Emergency Assistance and the Low Income Energy Assistance Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Chad Edwards, ESW, DHHR

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

_____,

Claimant,

v.

Action Number: 08-BOR-2555 and 08-BOR-2556

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on December 11, 2008 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing convened on December 10, 2008 on a timely appeal filed December 8, 2008.

II. PROGRAM PURPOSE:

The Low Income Energy Assistance Program (LIEAP) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The goal of LIEAP is to provide financial assistance to eligible households that are affected by the rising costs of home heating that are excessive in relation to household income. It is not the purpose of this program to meet the entire cost of home heating during the winter season. Instead the program is designed to partially offset the continuing rise in costs of home heating.

Emergency Assistance is used to assist individuals and families in meeting a financial crisis when they are without available resources. The program is designed to provide short-term emergency financial assistance with which eligible individuals and families may obtain items or services needed to eliminate an emergency or crisis. Those who are in need of and qualify for Emergency Assistance may already be participating in an economic or social service program.

III. PARTICIPANTS:

_____, Claimant
Chad Edwards, Economic Service Worker, DHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

It should be noted that all parties participated telephonically.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department took the correct action in denying the Claimant's Emergency Assistance and Low Income Energy Assistance Program applications.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 10- Appendix A, 19.2 and 26.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing summary
- D-2 West Virginia Income Maintenance Manual Section 10-Appendix A
- D-3 West Virginia Income Maintenance Manual Section 26.2, A, 3, c
- D-4 West Virginia Income Maintenance Manual Section 26.2, A, 3, d
- D-5 Notice of Decision dated October 28, 2008
- D-6 Notice of Decision dated December 2, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant applied for Emergency Assistance for kerosene on October 20, 2008. The application was denied due to excessive income for a two-person Assistance Group. The Economic Service Worker testified that the Claimant's total gross household income is \$976 and the income limit for two people is \$533, as dictated by Emergency Assistance policy. The worker reported that the Department attempted to obtain alternative financial resources for the Claimant through outside Agencies, but was unsuccessful.
- 2) The Claimant was sent a Notice of Decision on October 28, 2008 (D-5) addressing the reason for denial of Emergency Assistance.

- 3) The Claimant applied for the Low Income Energy Assistance Program (LIEAP) on December 1, 2008. At that time, the Claimant indicated he had been heating his residence with a kerosene space heater, but no longer felt the kerosene heater was safe to use. The Claimant wished to change his primary heating source to electric – as he has several electric space heaters – however, his electrical service had been terminated. He reported he had been using the electric space heaters prior to the service termination because he felt they were safer than kerosene. He also reported that he had difficulty obtaining kerosene and transporting it to his residence.
- 4) The Economic Service Worker testified that the LIEAP application was denied because the Claimant's LIEAP payment would have been insufficient to restore his electrical service. The worker indicated that he contacted Allegheny Power Co. and the company refused to restore the Claimant's electrical service for no less than his \$857 past due balance and a security deposit of \$111. The worker stated that no other monetary resources were available to the Claimant and his supervisor would not approve LIEAP for the purchase of kerosene due to safety concerns. The worker indicated that he made Adult Protective Services aware of the Claimant's home heating dilemma.
- 5) The Department sent the Claimant a Notice of Decision on December 2, 2008 (D-6) citing the reason for the LIEAP denial.
- 6) The Claimant testified that he has been heating his residence with a kerosene heater placed in the front room of his home. He indicated that he brought his wife's bed into the room and the two have been staying in one room to keep warm. The Claimant stated that he believes his kerosene heater is unsafe due to the fumes it produces and that his kerosene supply is nearly exhausted.
- 7) West Virginia Income Maintenance Manual Section 19.2, 5, A states that the total monthly gross income of the Emergency Assistance household is compared to the maximum allowable gross income amounts for the Assistance Group size (as cited in Chapter 10, Appendix A).
- 8) West Virginia Income Maintenance Manual Section 10, Appendix A (D-2) states that the income limit for Emergency Assistance for a two-person household is \$533.
- 9) West Virginia Income Maintenance Manual Section 26.2, A, 3, c (D-3) states:

AGs in dwellings where home heating service has been terminated and the account has been closed prior to the date of application are considered vulnerable **if the home heating supplier agrees to restore service upon the approval of LIEAP or in combination with other payments** (emphasis added).

NOTE: The Worker must not obligate a payment until all other needed payments have been obtained. Any payment obligated to a vendor, whether verbal or in writing, must be honored if the vendor restores service and it is later determined that other payments were never received.

- 10) West Virginia Income Maintenance Manual Section 26.2, A, 3, d (D-4) states:

Portable heating devices such as, but not limited to, electric and kerosene space heaters, are not considered primary sources of heating except when an emergent life-threatening situation exists, the dwelling is totally without a heating source, and the AG has no alternate housing available.

It is considered dangerous to AG members and detrimental to program goals to heat a dwelling with space heaters. Such use must not be encouraged. Exceptions require supervisory approval.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that a household's gross income is compared to the maximum allowable income limit for the Assistance Group size to determine Emergency Assistance eligibility. If household income exceeds the allowable limit, the application is denied.
- 2) The Claimant's total gross household income is \$976 and the Emergency Assistance income limit for a two-person Assistance Group is \$533. Therefore, the Claimant's household income is excessive for Emergency Assistance and the Department properly denied his application.
- 3) Policy states that Assistance Groups whose home heating service has been terminated - with the account closed prior to the date of application - are considered vulnerable if the home heating supplier agrees to restore service upon the approval of LIEAP or in combination with other payments. Allegheny Power Co. refused to restore the Claimant's electrical service for no less than full payment of his \$857 delinquent account plus a security deposit. As the Claimant would have qualified for a total LIEAP payment of \$229 and no supplemental resources were available, the Department acted correctly in denying a LIEAP payment for electricity. Because the Claimant considers his kerosene space heater to be an unsafe heat source, the Department supervisor acted within her discretion in denying a LIEAP payment for kerosene.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny the Claimant's Emergency Assistance and LIEAP applications.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 11th Day of December, 2008.

Pamela L. Hinzman
State Hearing Officer