



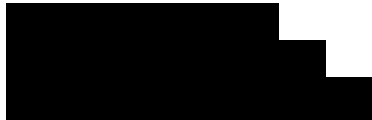
**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 558-2278 Fax: (304) 558-1992**

**Jolynn Marra
Interim Inspector General**

January 22, 2021



RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-1022

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 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,

Angela D. Signore
State Hearing Officer
State Board of Review

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

cc: Tera Pendleton, [REDACTED] County DHHR

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

██████████,

Appellant,

v.

ACTION NO.: 21-BOR-1022

**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 (WV) Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on January 21, 2021, on an appeal filed December 30, 2020.

The matter before the Hearing Officer arises from the December 22, 2020 determination by the Respondent to deny the Appellant's application for Low Income Energy Assistance Program (LIEAP) benefits.

At the hearing, the Respondent appeared by Tera Pendleton, 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 PATH eligibility system printout of Case Comments dated August 12, 2020 through January 06, 2021
- D-2 WV DHHR LIEAP Application, dated December 7, 2020
- D-3 Letter Declaring Utility Payment Responsibility on Behalf of the Appellant, signed ██████████, dated December 08, 2020, and Appalachian Power Bill, scanned December 12, 2020
- D-4 WV DHHR Notice of Decision, dated December 22, 2020
- D-5 West Virginia Income Maintenance Manual (WVIMM) § 21.3.1.B through 21.3.1.C.2

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 applied for LIEAP benefits for home heating costs on December 07, 2020. (Exhibit D-2)
- 2) Question II C. of the December 07, 2020 application for LIEAP benefits asks: “Do you or someone in your household pay for your home heating costs?”, to which the Appellant marked “No.” (Exhibit D-3)
- 3) Question II C. of the December 07, 2020 application for LIEAP benefits further requests: “If No, who pays?”, to which the Appellant responded, “My mom [REDACTED].” (Exhibit D-3)
- 4) A written statement declaring responsibility for payment of all utility costs on behalf of the Appellant signed by [REDACTED] (Appellant’s mother) was included with the December 2020 application for LIEAP benefits. (Exhibit D-3)
- 5) On December 22, 2020, the Respondent issued a notice advising the Appellant that her application for LIEAP benefits was denied, due to not meeting eligibility requirements for this assistance. (Exhibit D-4)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) § 21.3.1.C Vulnerability to the Cost of Home Heating provides:

In order to qualify for a LIEAP payment, an AG must be determined vulnerable or partially vulnerable to the cost of home heating.

WVIMM § 21.3.1.C.1 Vulnerable Assistance Groups (AGs) provides, in part:

Vulnerable AGs are those which must pay the primary heating cost for the home in which they reside. The expense for heating must be billed separately from the rent or mortgage payment of the residence, even if the AG combines these payments. When payments are combined, the amount billed for the heating cost must be stated on a rent receipt, lease, or other documentation.

Vulnerability also exists when the AG must pay at least a part of the cost of home heating, whether they pay just part of the cost each month or alternate payments with a third-party.

WVIMM § 21.3.1.C.2 Invulnerable AGs provides:

Invulnerability means the AG has no home heating costs or is not responsible for payment of the heating cost. Clients who live in state institutions, hospitals and certain group living facilities, such as halfway houses and domestic violence centers, and those whose home heating costs are paid by a third-party, are considered invulnerable.

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 LIEAP benefits were correctly denied.

Pursuant to policy, an AG must be considered vulnerable or partially vulnerable to the cost of home heating in order to be eligible for LIEAP benefits. *Vulnerable* AGs are defined as those which must pay the primary heating cost for the home in which they reside. To be considered *invulnerable*, as established by policy, the AG either has no home heating costs or is not responsible for payment of the heating cost. Clients whose home heating costs are paid by a third-party are considered to be *invulnerable*.

On December 07, 2020, when the Appellant applied for LIEAP heating assistance, question II C. of the LIEAP application asked: "Do you or someone in your household pay for your home heating costs?", to which the Appellant marked "No." Question II C further requested: "If No, who pays?", to which the Appellant responded, "My mom [REDACTED]." Included with the Appellant's December 2020 application was a written statement signed by [REDACTED] (Appellant's mother) declaring responsibility for payment of all utility costs on behalf of the Appellant. In addition, at the time of the hearing the Appellant admittedly denied being responsible for the payment of her own home heating costs.

Because the Appellant's heating costs are paid by a third-party ([REDACTED]), she was not considered "vulnerable", and is therefore ineligible for LIEAP benefits. Because the Appellant was considered ineligible for LIEAP benefits, on December 22, 2020, the Respondent issued a notice advising the Appellant that her application for LIEAP was denied, due to not meeting eligibility requirements for this assistance.

Because the Appellant does not pay for her own home heating costs, the Respondent acted in accordance with policy in denying the Appellant's application for LIEAP benefits.

CONCLUSIONS OF LAW

- 1) Because the Appellant's heating costs are paid for by a third-party, she was considered invulnerable at the time of application.
- 2) Because the Appellant was considered invulnerable to her home heating costs at the time of application, she is therefore ineligible for LIEAP benefits.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's application for Low Income Energy Assistance Program benefits.

ENTERED this ____ day of January 2021.

Angela D. Signore
State Hearing Officer