



April 18, 2024

[REDACTED]

RE: [REDACTED] v. WVDoHS  
ACTION NO.: 24-BOR-1671

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 HUMAN SERVICES. 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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

cc: Tammy Lucas, Department Representative / April Wilson, Department Representative

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**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW**

██████████,

**Appellant,**

v.

**Action Number: 24-BOR-1671**

**WEST VIRGINIA DEPARTMENT OF  
HUMAN SERVICES  
BUREAU FOR FAMILY ASSISTANCE,**

**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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on March 28, 2024, upon a timely appeal filed on March 13, 2024.

The matter before the Hearing Officer arises from the February 28, 2024 decision by the Respondent to deny the Appellant's Low Income Energy Assistance Program (LIEAP) application.

At the hearing, the Respondent appeared by Tammy Lucas. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Case Summary
- D-2 Scheduling order excerpt
- D-3 Incomplete notice of decision dated February 28, 2024  
Hearing Request Notification form
- D-4 Case Comment screen prints from the Respondent's data system regarding the Appellant's case, entries dated November 29, 2023 through March 15, 2024

D-5 Internal procedure memoranda dated January 10, 2024

**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 applied for Low Income Energy Assistance Program (LIEAP) benefits on January 24, 2024.
- 2) The Appellant received LIEAP during the previous LIEAP season.
- 3) The Appellant should have received a mail-out application for LIEAP during the 2024 season.
- 4) The Appellant did not receive a mail-out application for LIEAP during the 2024 season.
- 5) The Appellant used form DFA-LIEAP-1 for her January 24, 2024 application.
- 6) The Respondent did not approve or deny the Appellant's LIEAP application within 30 days.
- 7) The Respondent denied the Appellant's LIEAP application on or about February 28, 2024. (Exhibit D-3)
- 8) The Respondent provided an incomplete notification letter (Exhibit D-3) which provided at least part of the Respondent's basis for denial as, "Your application has been denied. If you want to receive benefits in the future you must reapply."
- 9) The incomplete notification (Exhibit D-3) provided individual denial reasons as, "This individual does not meet eligibility requirements for this assistance."
- 10) The incomplete notification (Exhibit D-3) does not follow the instruction cited in the Respondent's internal procedural memoranda (Exhibit D-5) to "add text to the denial letter informing the household that they must reapply during the open intake period."
- 11) The Respondent's internal procedural memoranda (Exhibit D-5) is not found in the West Virginia Income Maintenance Manual.

- 12) The Respondent did not provide any testimony or evidence regarding any other basis for its denial of the Appellant's January 24, 2024 LIEAP application.

### APPLICABLE POLICY

The West Virginia Income Maintenance Manual, Chapter 21, §21.3.1.G, provides, in part:

Action must be taken to approve or deny a Regular LIEAP application within 30 days of the date it is received for processing by the Department of Human Services (DOHS). Verification is due within 15 days of the date the information is requested.

...

The West Virginia Income Maintenance Manual, Chapter 21, §21.4.1, addresses mail-out applications, and provides, in part (emphasis added):

The LIEAP mail-out contains an application form (DFA-LIEAP-1), an instruction sheet (DFA-LIEAP-1a). **It is mailed to any household which received LIEAP during the previous LIEAP season.** These applications are mailed prior to the program start date. The client may choose to return the completed form and information by mail or complete it online by use of West Virginia WV PATH.

...

The West Virginia Income Maintenance Manual, Chapter 21, §21.4.2.A, addresses the Respondent's outreach role, and provides (emphasis added):

Outreach is a federal requirement to ensure that potentially eligible, low income AGs are made aware of and encouraged to apply for benefits. Outreach is accomplished as follows:

- **DOHS mails applications as described above.**
- DOHS provides LIEAP informational leaflets to all appropriate agencies and interested individuals.
- DOHS contracts with Area Agency on Aging (AAA) offices and the West Virginia Office of Economic Opportunity (WVOEO), which permit senior citizen centers, local Community Action Agencies, homeless shelters, and other interested parties to receive LIEAP applications and information and referral services as desired. These are referred to as Sub-Grantee Agencies.
- Information and referral service organizations.

The West Virginia Income Maintenance Manual, Chapter 21, §21.4.5, provides (emphasis added):

The Worker's responsibilities are to:

- Process the application in the eligibility system;
- Determine if case has previous unpaid repayment;
- Determine eligibility;
- Determine the amount of the payment; and,
- Notify the client of the action taken.

**When the Low-Income Energy Assistance Program (LIEAP) client wishes to apply for another program in addition to LIEAP, the DFA-2 may be used instead of the DFA-LIEAP-1 form to prevent the need to complete two application forms. Otherwise, the DFA-LIEAP-1 must be completed for all LIEAP clients.**

...

### DISCUSSION

The Appellant appealed the decision of the Respondent to deny the Appellant's application for LIEAP payment based on ineligibility for early application processing, and the use of an incorrect application form. The Respondent must show by a preponderance of the evidence that it correctly denied LIEAP on these bases.

The Appellant applied for LIEAP on January 24, 2024. The Respondent did not process the Appellant's application timely, notifying the Appellant of its ultimate decision with a notice dated February 28, 2024, or 35 days after the application date. The Respondent did not present a full copy of the denial notice during the hearing. Some information on the denial notice is unknown because the Respondent failed to provide a complete notice of denial. What could be established from the only page of the notice provided (Exhibit D-3) is that the reasons for denial do not correspond with what was established at the hearing.

The Respondent's representative testified that the bases for denial were the ineligibility of the Appellant to apply in an early application period, and because the Appellant failed to use the correct application form. The notice (Exhibit D-3) appears to offer only the vague reasons, or non-reasons, of "Your application has been denied. If you want to receive benefits in the future you must reapply," and "This individual does not meet eligibility requirements for this assistance." The Appellant testified convincingly that she received LIEAP in the past year, and this is the only policy criteria for being a mass-mailing applicant, and being a mass-mailing applicant is the only requirement for participation in the early application period. The Appellant should have been allowed to apply during the early application period, based on the reliable evidence and testimony provided at the hearing.

The Respondent's representative testified that the Appellant used the form DFA-LIEAP-1 to apply

but failed to provide this application as evidence in the hearing. The Respondent appears to be relying on internal procedural memoranda (Exhibit D-5) to act on cases. This is problematic because the Respondent is required to transparently provide policy to the public, and internal procedures can easily cross the line from providing necessary procedural detail to concealing policy that it is required to disclose. In the Appellant's case, the internal rules violate the WVIMM instructions (§21.4.5) to accept the DFA-LIEAP-1 as a LIEAP application form. Although the testimony of the Respondent's representative is accepted to establish the fact that the Appellant used this form, additional facts could have been revealed if the Respondent had provided the application document as evidence. The Respondent failed to establish that it properly denied LIEAP on this basis.

Even if the Respondent's internal instructions (Exhibit D-5) are intended as policy that simply has not been added to the publicly available manual yet, the Respondent failed to meet its requirements according to these instructions. The Respondent offered a denial reason which read, "Your application has been denied. If you want to receive benefits in the future you must reapply," but did not *fully* meet the specific requirement to add text stating that the denied individual must reapply "...during the open intake period."

The Respondent did not meet its burdens to show that it properly notified the Appellant of a negative action, or that it properly denied the Appellant's LIEAP application for the reasons offered at the hearing. The Respondent's decision to deny cannot be affirmed. However, without evidence or testimony to clarify application details, total eligibility cannot be determined. The matter is therefore remanded to the Respondent to accept the Appellant's January 24, 2024 application for LIEAP as presented, **without regard to seasonal deadlines or the superficial form-based denials previously offered**. The Respondent will determine the Appellant's eligibility for LIEAP at the time of the January 24, 2024 application, and issue a notice of decision to the Appellant. The Respondent will gather additional information, if needed, using a verification checklist to the Appellant with ordinary deadlines. An unfavorable eligibility decision from the Respondent is a new determination and may be appealed by the Appellant.

### **CONCLUSIONS OF LAW**

- 1) Because the Appellant received LIEAP in the past season, the Appellant should have received a mass mailing LIEAP application this year and been afforded the opportunity to apply in the early LIEAP application period.
- 2) Because the Appellant should have received a mass mailing LIEAP application this year, and did not correct this upon discovery, the Respondent failed to meet its outreach role as defined in policy.
- 3) Because the Respondent did not remedy its failure to provide the Appellant a correct application document, the Respondent may not deny the Appellant's application for reasons caused by the Respondent's error.

- 4) Because the Respondent failed to properly issue a mass mailing LIEAP application to the Appellant, it may not deny the Appellant the opportunity to apply in the early LIEAP application period.
- 5) Because the Respondent did not clearly provide the actual reasons for denial in its adverse notice, it did not properly notify the Appellant of its negative action.
- 6) Because policy allows for LIEAP application using the DFA-LIEAP-1 form, the Respondent may not deny LIEAP for using the DFA-LIEAP-1 form.
- 7) The Respondent must evaluate the Appellant's January 24, 2024 LIEAP application for eligibility at that time, without relying on seasonal deadlines or the unsupported bases for denial outlined herein.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant's LIEAP application and **REMAND** the case to the Respondent to reevaluate the Appellant's January 24, 2024 application for LIEAP, without regard to the application form used or seasonal deadlines. The Respondent must issue a verification checklist for any information required to determine the Appellant's eligibility for LIEAP at the time of her January 24, 2024 application, using ordinary verification checklist deadlines. The Respondent must issue proper notification to the Appellant of the decision made regarding the reevaluated January 24, 2024 LIEAP application.

**ENTERED this \_\_\_\_\_ day of April 2024.**

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**Todd Thornton  
State Hearing Officer**