



January 8, 2025

[REDACTED]

RE: [REDACTED] v. WV DoHS
ACTION NO.: 24-BOR-3901

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,

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

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

Cc: Hannah McComas, WV DoHS

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

██████████,

Appellant,

v.

Action Number: 24-BOR-3901

**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 January 2, 2025, on an appeal filed December 17, 2024.

The matter before the Hearing Officer arises from the determination by the Respondent to deny the Appellant's right to apply for the Utility Discount Program (UDP).

At the hearing, the Respondent appeared by Hannah McComas, Department of Human Services (DoHS) Economic Service Supervisor. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

None

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) On or about December 17, 2024, the Appellant expressed interest in applying for Utility Discount Program (UDP) benefits.
- 2) On or about the same date, December 17, 2024, the Respondent Worker denied the Appellant's request for an application for UDP benefits.
- 3) Subsequent the Respondent's refusal to provide an application for UDP benefits, the Appellant requested a Fair Hearing.
- 4) The Appellant is fifty-five (55) years of age.
- 5) The Appellant does not receive Supplemental Security Income (SSI) benefits.
- 6) The Appellant is a recipient of Social Security Disability Insurance (SSDI) benefits.
- 7) The Appellant does not receive WV WORKS benefits.

APPLICABLE POLICY

West Virginia Code § 24-2A-5 provides, in part:

(a) The commission may authorize a privately owned water, sewer or combined water and sewer utility to voluntarily implement a rate design featuring reduced rates and charges for service for residential utility customers receiving:

- (1) Social Security Supplemental Security Income (SSI);
- (2) Temporary Assistance for Needy Families (TANF);
- (3) Temporary Assistance for Needy Families-Unemployed Parent Program (TANF-UP);or
- (4) Assistance from the Supplemental Nutrition Assistance Program (SNAP) if they are sixty years of age or older.

(b) The special reduced rate offered by each water, sewer, or combined water and sewer utility to its eligible customers shall be a percentage less, which shall be approved by the commission, than the rate that would be applicable to such customers if they were not receiving any of the four forms of assistance that confer eligibility for the special reduced rates approved by the commission: *Provided*, That such rate reduction shall not exceed 20 percent of the rate that would be otherwise applicable.

(c) Before any individual may qualify to receive the special reduced rates, the following requirements must be met:

(1) The special reduced rates may apply only to current customers or to those persons who subsequently become customers in their own right. If an SSI, TANF, TANF-UP or SNAP recipient is living in a household that is served under the name of a person who is not an SSI, TANF, TANF-UP or SNAP recipient, that service may not be changed or have been changed subsequent to July 1, 2011, to the name of the SSI, TANF, TANF-UP or SNAP recipient in order to qualify for service under the special reduced rates.

(2) The burden of proving eligibility for the special reduced rates shall be on the customer requesting such rates. The Department of Human Services shall establish by rules and procedures:

(A) To inform persons receiving any of the four forms of assistance that confer eligibility for the special reduced rates about the availability of the special reduced rates;

(B) To assist applicants for the special reduced rates in proving their eligibility therefor; and

(C) To assist water, sewer, or combined water and sewer utilities offering the special reduced rates in determining on a continuing basis the eligibility therefor of persons receiving or applying for such rates.

The commission shall establish rules and procedures for the application for and provision of service under the special reduced rates and for the determination and certification of revenue deficiencies resulting from the special reduced rates.

(3) In order to provide each eligible residential utility customer the special reduced rates, each utility providing the special reduced rates shall credit against amounts otherwise owed by each customer an amount equal to the difference between the total amount that each customer was actually billed during the previous month and the total amount that each customer would have been entitled to be billed under the special reduced rates. Each credit shall be fully reflected on the first bill issued to each customer after approval of each customer's application for the special reduced rates, except in cases where the interval between the approval and the issuance of the next bill is so short that it is administratively impracticable to do so, in which case, such credits shall be fully reflected on the second bill issued to each customer after approval of that customer's application. If the interval between the approval and the issuance of the next bill is 15 days or more, it may not be deemed administratively impracticable to reflect the credit on the customer's first bill.

West Virginia Income Maintenance Manual § 1.2.1.A provides, in part:

In addition to addressing all questions and concerns the client may have, the Worker must explain the benefits of each program and inform the client of his right to apply for any or all of them. No person is denied the right to apply for any Program administered by the Division of Family Assistance (DFA) or the Bureau for Medical Services (BMS). Every person must be afforded the opportunity to apply for all Programs on the date he expresses his interest.

WVIMM § 1.2.1.B provides, in part:

The Worker must provide the requested information to all those who have applied for benefits, or who inquire about the requirements for receiving benefits. This information includes a basic explanation of the eligibility requirements and answers to general questions.

- If the Worker does not know the answer to the general question, he must consult with his Supervisor.
- If the answer is unknown to the Supervisor, they may submit the question to the appropriate Policy Unit.
- Applicants, potential applicants, or their authorized representative must not be referred to the Policy Unit for a direct response.
- The Worker must not act as a financial planner or make suggestions about the client's current or future financial situation.

WVIMM § 20.4.2.A provides, in part:

WVAW customers who receive one of the following benefits are eligible to receive the 20% utility discount. This program operates year-round:

- Supplemental Nutrition Assistance Program (SNAP) and over age 60
- Supplemental Security Income (SSI) and at least 18 years old
- WV WORKS

The Department of Human Services' (DOHS) role is to send application packets to clients of the qualifying benefits and to supply the water company with lists of clients who have become ineligible for the discounts because they are no longer eligible for one of the qualifying benefits.

WVIMM § 20.4.2.B provides, in part:

Initial application packets have been mailed to the above clients. Application packets are mailed to new and reopened AGs that are approved for at least one of the qualifying benefits.

In addition, an application will be mailed to a client upon request if he is a client of a qualifying benefit and has lost or failed to receive his original application packet. If he is not a client of a qualifying benefit, he will receive a notice from the DFA explaining why he is not eligible for the discount.

The client completes the application and submits it to the water company. The water company determines eligibility for the discount and applies the reduced rate to the eligible client's account. Approved applications are sent by the water company to the DFA.

Each month, the DFA sends WVAW a list of its customers who have become ineligible for the discount because they are no longer receiving a qualifying benefit. The company removes the discount from those accounts.

WVIMM § 20.4.1.C provides, in part:

When the client receives the application, it contains the name and birth date of all eligible persons in the AG, effective date, case number, address, the Social Security Number for the primary person, and a date by which the application should be returned to WVAW. In addition, a waiver at the bottom of the form must be signed by the payee to allow the DOHS to verify eligibility of the AG for the water company.

WVIMM § 20.4.1.C provides, in part:

The local office must:

- Refer inquiries about the program from utility companies to the DFA.
- Send the DFA the name, address, case number and Social Security Number of clients claiming to be qualified for the discount who reported they did not receive an application packet or whose original packet was lost or destroyed.

DISCUSSION

The 20% Utility Discount Program (UDP) was established to assist eligible assistance groups (AG) in receiving a 20% reduction in their gas, electric, and water rates during certain times of the year. The Department of Human Services' (DoHS) role is to issue application packets to current recipients of qualifying benefits, as well as to supply the utility companies with a list of clients who have become ineligible for the discount. During certain times, potential eligibility is screened through an automated process and application packets are mailed to clients who are recipients of one of the three qualifying benefits: receiving SNAP and over age 60, clients who are recipients

of Social Security Income (SSI) and over the age of 18, and/or clients who are recipients of WV WORKS. Application packets are also mailed to any new and reopened AG's who begin receiving qualifying benefits and meet the additional program requirements.

During the hearing the Respondent testified that on or about December 17, 2024, the Appellant attempted to apply for UDP benefits. However, because he does not meet all of the program requirements as established by the policy, an application could not be provided. The Respondent testified that application packets are automatically issued through the Respondent's database to recipients of qualifying benefits who meet the additional requirements established in policy. She reasoned that because the Appellant is not age 60 or older, and because he is receiving Social Security Disability Insurance (SSDI) benefits instead of SSI, an application packet was not automatically issued during the automated screening process. The Respondent further testified that she was unsure if an application could be issued to an individual outside of the automated process. The Appellant did not refute the Respondent's testimony and expressed an understanding of why the agency must follow the state regulation (West Virginia State Code §24-2A-5) that has allegedly excluded him from receiving an application packet. However, he testified that he feels as if the policy is "outdated" and sought guidance from the Hearing Official for how an individual could suggest the state code be updated to "current times." The Appellant argued that WV Code §24-2A-5 not only prevents him from receiving UDP benefits due to his age (55 years old), but it also excludes him because he receives SSDI benefits instead of SSI benefits. Additionally, the Appellant questioned whether the Board of Review has the authority to change the policy. Because the role of the Hearing Official is to remain neutral and impartial, providing advice could be seen as favoring one side of the dispute, violating the Hearing Official's duty to maintain fairness in the hearing process. Further, because the Board of Review is bound by agency policy, along with state and federal regulations, this Hearing Officer cannot pass judgment on the policy itself and can only determine whether the Respondent correctly followed the policy in its determination.

Pursuant to policy, an application packet will be mailed to a client upon request if he is a recipient of a qualifying benefit and has lost or failed to receive his original application packet. Under operation of the utility discount program, client's who have been issued application packets are instructed to complete the application and submit them directly to the utility company. Once the application is received, presumed eligibility is determined by the utility company, and the reduced rate is applied to the client's account. Per policy, the Respondent is not required to send an application to a client who is not a recipient of qualifying benefits. Conversely, the policy also provides that no person is denied the right to apply for any program on the date they express interest. The Appellant did not refute the Respondent's assertion of ineligibility due to unmet program requirements. Additionally, the Appellant provided corroborating testimony of his ineligibility that: he is not an SSI recipient, and he is under the age of 60. Therefore, the preponderance of evidence showed that the Appellant did not meet the UDP eligibility criteria, and therefore should not have received an auto generated application packet.

On the other hand, policy also clearly directs that if a client wishes to apply for UDP benefits but is not a recipient of a qualifying benefit or does not meet the additional program requirements established by the policy, he will receive a notice explaining why he is not eligible. No evidence was provided to verify the Respondent met this policy requirement. However, while the Respondent may have failed to issue a notice to the Appellant explaining why he is not eligible for the discount program, the Appellant was found not to have been prejudiced by the Respondent's error, as the matter of the Appellant's ineligibility was addressed at the time of the hearing.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, potential UDP eligibility is determined through an automated process and application packets are mailed to clients who meet potential eligibility.
- 2) To be eligible for the UDP, a client must be a recipient of one of the three qualifying benefits: SNAP, SSI, or WV WORKS. To obtain eligibility as a SNAP recipient, a client must meet an additional age requirement – 60 years or older. To obtain eligibility as an SSI recipient, a client must meet an additional age requirement – 18 years or older.
- 3) Because the Appellant does not receive WV WORKS, SSI, and is not a SNAP recipient who is over age 60, the Appellant does not meet the UDP eligibility criteria.
- 4) Because the Appellant does not meet the UDP eligibility criteria, the Respondent acted correctly when not issuing an application packet.
- 5) Pursuant to policy, if a client is not a recipient of a qualifying benefit and does not meet the additional program requirements, the Respondent must issue a notice explaining why he is not eligible.
- 6) The Respondent failed to issue proper notice to the Appellant explaining why he is not eligible for UDP benefits.
- 7) Because the Appellant’s ineligibility was addressed at the time of the hearing, the Appellant was not prejudiced by the Respondent’s error.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent’s determination of the Appellant’s ineligibility for Utility Discount Program benefits.

ENTERED this _____ day of January 2025.

**Angela D. Signore
State Hearing Officer**