



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 23, 2005

C/O _____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 8, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to close your Food Stamp case based on a felony drug conviction.

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 for the Food Stamp Program is based on current policy and regulations. Some of these regulations state that individuals who have been convicted of a felony offense which occurred on or after 8/23/96, which involved possession, use or distribution of a controlled substance as defined by section 102 (6) of the Controlled Substance act, are permanently ineligible for Food Stamp benefits. (West Virginia Income Maintenance Manual ' 9.1, A, 2, (f) and 7 CFR 273.11- Code of Federal Regulations)

Information submitted at the hearing revealed that felony drug proceedings against you were dismissed.

It is the decision of the State Hearing Officer to **reverse** the determination of the Agency that you are permanently disqualified from participation in the Food Stamp Program based on a felony drug conviction.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Carrie Casto, ESW, DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

C/O _____

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 23, 2005 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 February 8, 2005 on a timely appeal filed November 4, 2004.

It should be noted here that benefits under the Food Stamp Program have continued pending the results of the hearing.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The program entitled **Food Stamps** is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

The purpose of the Food Stamp Program is to provide an effective means of utilizing the nations abundance of food to safeguard the health and well-being of the nations population and raise levels of nutrition among low-income households. This is accomplished through the issuance of food coupons to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

_____, Claimant
Carrie Casto, ESW, DHHR
Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED

The question to be decided is whether the Department was correct in their determination that the Claimant should be permanently disqualified from participation in the Food Stamp Program based on a felony drug conviction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual ' 9.1
7 CFR ' 273.11(m) - Code of Federal Regulations
Ohio Revised Code ' 2951.041 (A) (1), (D) and (E)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 Notice of Decision dated November 10, 2004.
- D-2 Judgment Entry from the Court of Common Pleas, [REDACTED] Ohio, entered 2/15/02.
Judgment Entry from the Court of Common Pleas, [REDACTED] Ohio, entered 1/24/03.
- D-3 Case Comments from the Department's RAPIDS Computer System.
- D-4 WVIMM Chapter 9.1

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

1. The Claimant completed an application for Food Stamp and SSI-Related Medicaid benefits on September 13, 2004. The Claimant's application for Food Stamp benefits was initially denied, but he returned in October 2004 and provided the Department a court order from the Court of Common Pleas, [REDACTED] Ohio (D-2) that indicates he received intervention in lieu of a felony drug conviction.
2. The Department reviewed the court order (D-2) on or about October 25, 2004 and opened the Claimant's Food Stamp case retroactive to the date of application (September 13, 2004) and forwarded the court order to the Department's Policy Unit for Review on November 5, 2004.
3. The Policy Unit reviewed the Claimant's court order and concluded that he is a convicted drug felon and therefore not eligible to receive Food Stamp benefits.
4. On November 10, 2004, the Department sent the Claimant a Notice of Decision (D-1). This notice advises the Claimant that his Food Stamp benefits would stop effective November 2004 and that he is "disqualified for a drug felony conviction."
5. The Claimant testified that on February 14, 2002, he went before Judge David Tobin and was given two options; 1) to serve 2 additional months in [REDACTED] Jail and be released on five years probation or, 2) he could be sentenced to "treatment in lieu of conviction" where he would spend six months in the [REDACTED] Correctional Center and receive treatment, followed by probation. He stated that by successfully completing treatment and the terms of probation, his case was dismissed.
6. West Virginia Income Maintenance Manual 9.1 provides information regarding who must be included in the Food Stamp Assistance Group (AG), who cannot be included, and those who are excluded from participation in the Food Stamp Program. Section 9.1, A,2,f - states that persons who are excluded by law as found below are ineligible and may not be a separate AG. Among those who are excluded permanently from participation in the Food Stamp Program are individuals who were convicted of a felony offense which occurred on or after 8/23/96 which involved possession, use or distribution of a controlled substance as defined by section 102 (6) of the Controlled Substance Act.
7. The Claimant submitted Exhibit D-2, a Judgment Entry from the Court of Common Pleas, [REDACTED] County, Ohio, signed by Judge David Tobin on February 14, 2002 and filed by the Clerk on February 15, 2002 (Case [REDACTED]). The court, in this Judgment Entry found that the Claimant was eligible for intervention in lieu of conviction. Claimant entered a guilty plea and was ordered to a period of rehabilitation at the [REDACTED] Ohio Correction Center, followed by probation under the supervision of the Adult Probation Department.

Exhibit D-2 also includes a second Judgment Entry signed by Judge Tobin on January 23, 2003 and filed by the Clerk on January 24, 2003. In this order, the Adult Probation Department made a motion for early termination of the Claimant's probation because he had complied with the terms and conditions of his probation. The last paragraph states – "Therefore, it is the Order of this Court that the said Probation be, and hereby is, TERMINATED EARLY, and the Defendant is restored to all rights of citizenship which were lost

by reason of his/her conviction.

8. Judicial notice is taken of Ohio Revised Code ' 2951.041, Intervention in lieu of conviction, which statute provides in pertinent part that "if the court finds that the offender has successfully completed the intervention plan for the offender . . . and all other terms and conditions ordered by the court, the court shall dismiss the proceedings against the offender. Successful completion of the intervention plan and period of abstinence under this section shall be without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law."
9. The January 23, 2003 Judgment Entry is evidence of successful completion of the Intervention in lieu of conviction. Pursuant to Ohio Revised Code ' 2951.041, the case against Claimant was dismissed; therefore, Claimant does not have a felony drug conviction stemming from case number 99-CR-205 filed in the Court of Common Pleas, [REDACTED] County, Ohio.

VIII. DECISION:

The evidence submitted in this case reveals that the Claimant pleaded guilty to a felony charge of possession of drugs in order to receive "Intervention in lieu of conviction," a program established by Ohio Revised Code ' 2951.041 to assist drug dependent individuals or individuals who are in danger of becoming drug dependent. The Claimant successfully completed the court's established intervention plan and the proceedings against the Claimant were subsequently dismissed.

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **reverse** the Department's determination that the Claimant is permanently disqualified from participation in the Food Stamp Program.

IX. RIGHT OF APPEAL

See Attachment

X. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29