



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**Board of Review**  
**2699 Park Avenue, Suite 100**  
**Huntington, WV 25704**

**Joe Manchin III**  
**Governor**

**Martha Yeager Walker**  
**Secretary**

December 19, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 15, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the Food Stamp Program.

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 as follows: individuals convicted of a drug felony on or after August 23, 1996 are not eligible Food Stamp household members or eligible to receive Food Stamps (WV Income Maintenance Manual Section 9.1 A, 2 g and Federal Regulations Section 273.11 m).

The information which was submitted at your hearing revealed that you were convicted of a drug felony as you pled guilty on May 27, 2003 to a felony offense which involved possession, use, or distribution of a controlled substance.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your application for the Food Stamp Program.

Sincerely,

Thomas M. Smith  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Rosemary Fry, Dept. Hearing Rep.  
\_\_\_\_\_, Claimant's Representative

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 06-BOR-3349**

**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 18, 2006 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 was convened on December 15, 2006 on a timely appeal filed November 30, 2006.

It should be noted here that the claimant's benefits were denied pending a hearing decision.

**II. PROGRAM PURPOSE:**

The Program entitled Food Stamp Program is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

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

**III. PARTICIPANTS:**

1. \_\_\_\_\_, Claimant.

2. \_\_\_\_\_ Claimant's mother and representative.
3. Rosemary Fry, Dept. Hearing Rep.

Presiding at the Hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the Department took the correct action to deny the application for the Food Stamp Program due to drug felony conviction.

#### **V. APPLICABLE POLICY:**

WV Income Maintenance Manual Section 9.1.  
Federal Food Stamp Regulations Section 7 CFR 273.11 m.

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- A Copy of hearing summary.
- B Copy of notification letter dated 12-01-06 (4 pages).
- C Copy of WV Income Maintenance Manual Section 9.1, A. 2.

##### **Claimants' Exhibits:**

- C-1 Copy of judgment with plea entered 5-27-03 (14 pages).

#### **VII. FINDINGS OF FACT:**

- 1) The claimant applied for Food Stamps on 11-21-06 and reported that she had been charged and convicted of a drug felony on or after 8-23-96 and the application was denied.
- 2) Written notification of denial of the Food Stamp application was issued on 12-1-06 (Exhibit #B) and the claimant requested a hearing on 11-30-06.
- 3) Testimony from Ms. Fry purported that the claimant informed her that she had been convicted of a drug felony after 8-23-96 and that she did not obtain any written verification of the conviction.
- 4) Testimony from the claimant's representative purported that she pled guilty to a fourth degree felony of conspiring to commit illegal conveyance of drugs of abuse after 8-23-96, that she was sentenced to probation, that the record will be expunged in June, 2007, and that she should not be held responsible for life. Exhibit #C1-1 was presented during the hearing and was entered on behalf of the claimant.

- 5) The hearing decision was continued with claimant's agreement to allow an opportunity for the caseworker, Ms. Fry, to consult with her Supervisor to determine if the plea the claimant entered (Exhibit #CI-1) meets the criteria for a drug felony conviction. On 12-18-06, the State Hearing Officer was informed that the Department maintained its original decision that the claimant was convicted of a drug felony.
- 6) Exhibit #CI-1 shows that the claimant pled guilty (entered an Alford Plea) on 5-27-03 to the "offense of Conspiracy to Commit Illegal Conveyance of Drugs of Abuse onto the Grounds of a Detention Facility of a Mental Health or Mental Retardation and Developmental Disabilities Institution in violation of R.C 2923.01 & 2921.36 (A)(2) & (F)(2) being a felony of the fourth degree".
- 7) WV Income Maintenance Manual Section 9.1 A, 2 states, in part:

"2. Who Cannot Be Included

The following individuals who reside with an AG are not considered AG members or are ineligible to be included in the AG. See item B below for treatment of these individuals' income.....

g. Individuals Excluded by Law

Persons who are excluded by law as found below are ineligible and may not be a separate AG. The periods of ineligibility are as follows:

REASON FOR EXCLUSION	LENGTH OF EXCLUSION
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.."	Permanent

- 8) Federal Regulations under 7 CFR 273.11 m state, in part:

"Individuals convicted of drug-related felonies:

An individual convicted (under Federal or State Law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance shall not be considered an eligible household member unless the State Legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. Ineligibility under this provision is only limited to conviction based on behavior which occurred after 8-22-96."

- 9) The only area of dispute involved the claimant's disagreement that her conviction met the criteria of the drug felony policy. The claimant entered a guilty plea (Alford Plea)

on 5-27-03 to conspiracy to commit illegal conveyance of drugs of abuse which was a felony of the fourth degree. The State Hearing Officer finds that the claimant's guilty plea was correctly determined by the Department to be a conviction involving possession, use, or distribution of a controlled substance. Federal Regulations in 7 CFR 273.11 m state that an individual convicted of any offense which is classified as a felony by the law and has an element of possession, use or distribution of a controlled substance will cause the individual to be ineligible for Food Stamp benefits. The claimant pled guilty to a felony involving the conveyance (transfer or delivery) of drugs of abuse after 8-22-96.

#### **VIII. CONCLUSIONS OF LAW:**

- 1) WV Income Maintenance Manual Section 9.1 A, 2 states that individuals who reside with an AG are not considered AG members or are ineligible to be included in the AG if convicted of a felony offense which occurred on or after 8-23-96 which involved possession, use or distribution of a controlled substance. The claimant was convicted of a drug felony which occurred on or after 8-23-96 as the offense occurred on 1-30-03 and she pled guilty to a Fourth degree felony on 5-27-03.
- 2) Federal Regulations in 7 CFR 273.11 m state that an individual convicted of a felony offense involving the possession, use or distribution of a controlled substance after 8-22-96 shall not be considered an eligible household member unless the State Legislature in the state where the individual lives has enacted a law exempting such individuals from the Food Stamp eligibility exclusion. The State of West Virginia has enacted no such law to allow individuals convicted of a drug felony to be eligible for Food Stamps.
- 3) WV Income Maintenance Manual Section 9.1 A, 2 g states that the length of exclusion from the Food Stamp Program is permanent.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the action of the Department to deny the application for Food Stamps.

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 19th Day of December, 2006.**

---

**Thomas M. Smith  
State Hearing Officer**