



**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

May 11, 2007

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 1, 2007. Your hearing request was based on the Department of Health and Human Resources' action to close your Food Stamp Program case effective April 30, 2007.

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: persons who are excluded from Food Stamp eligibility include individuals who are fleeing to avoid prosecution, or custody/confinement after conviction, for a crime or attempt to commit a crime that is a felony under the law of the place from which the individual is fleeing (WV Income Maintenance Manual Section 9.1 A, 2 g and Federal Regulations Section 273.11 n).

The information which was submitted at your hearing revealed that you are a fleeing felon from the state of \_\_\_\_\_

It is the decision of the State Hearing Officer to uphold the action of the Department to close your Food Stamp Program case effective April 30, 2007.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
Clarence Dillon, Dept. Hearing Rep.

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

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

**v.**

**Action Number: 07-BOR-1023**

**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 May 8, 2007 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 May 1, 2007 on a timely appeal filed March 30, 2007.

It should be noted here that the claimant's benefits were closed pending a hearing decision. While the claimant requested a hearing within the 13 day advance notice period and did not check whether or not to continue benefits, the case was approved as an expedited service case and since the application was made after the 16<sup>th</sup> of the month (3-20-07) and verification requested was postponed, the certification period was established as two (2) months and the claimant would not have been eligible for continued benefits due to the expiration of the certification period on April 30, 2007.

**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. Clarence Dillon, Dept. Hearing Rep.
3. Dale Browning, Income Maintenance Supervisor.

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 close the Food Stamp Program case due to claimant being a fleeing felon.

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

WV Income Maintenance Manual Section 9.1.  
Federal Food Stamp Regulations Sections 273.11 n.

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

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

- |        |  |
|--------|--|
| DHHR-1 | Copy of notification information checklist letter dated 3-20-07. |
| DHHR-2 | Copy of closure letter dated 3-26-07 (3 pages).                  |
| DHHR-3 | Copy of WV Income Maintenance Manual Section 9.1 A, 2, g.        |
| DHHR-4 | Copy of hearing request.   |
| DHHR-5 | Copy of form IG-BR-29.   |
| DHHR-6 | Copy of hearing appointment letter                               |

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

- |     |   |
|-----|---|
| C-1 | Copy of Judgment in a Criminal Case entered 11-21-97 (8 pages). |
|-----|---|

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

- 1) The claimant applied for Food Stamps on 3-20-07 and the application was considered expedited based on claimant's statement of zero income.
- 2) The claimant reported that she may have drug related charges in the state of [REDACTED] and the caseworker issued an information checklist form (Exhibit #DHHR-1) informing the claimant that she needed to provide the status of charges pending in [REDACTED] by 4-20-07.
- 3) Expedited Food Stamps were approved for the claimant in the amount of \$56 for the month of March, 2007 and \$155 for the month of April, 2007.

- 4) On 3-23-07, the caseworker followed up on the drug charge information and spoke with the Criminal Department in [REDACTED] County, [REDACTED] which reported that there were three (3) outstanding felony warrants against the claimant including (1) maintaining a vehicle, dwelling, place for a controlled substance, (2) trafficking opium or heroin, and (3) conspiracy to sell and deliver schedule II control substances.
- 5) The caseworker determined that the claimant was a fleeing felon and action was taken to close the Food Stamp case with notification of case closure issued on 3-26-07 effective 4-30-07 (Exhibit #DHHR-2).
- 6) The State Hearing Officer explained the hearsay evidence rule and the claimant stated that she had no objection.
- 7) The Department testified that the requested information was never received from the claimant.
- 8) The claimant testified that she was pulled over on 11-27-06 in [REDACTED] that there are warrants for her arrest, that she talks to the State Bureau of Investigations in [REDACTED] on a weekly basis, that she was advised by them not to surrender to the warrants until she finishes her rehabilitation, that she is not fleeing arrest, that she is rehabbing in the Renaissance Program, that she did not get the letter requesting information, that she has been in West Virginia since December, and that the warrants were issued in February, 2007.
- 9) It should be noted that the State Hearing Officer ordered the claimant to obtain documentation from the State Bureau of Investigation to support her statement that she is not a fleeing felon and the claimant was allowed five (5) days to fax the statement to the State Hearing Officer. The State Hearing Officer informed the parties that if no further documentation was received within five (5) days, the hearing decision would be issued based on the evidence and testimony presented during the hearing. As of May 8, 2007, no additional documentation was received from the claimant and the State Hearing Officer proceeded with the hearing decision.
- 10) 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

Fleeing to avoid prosecution, or custody/

Ineligible while identified

confinement after conviction, for a crime or

in this category.

or attempt to commit a crime that is a felony  
under the law of the place from which the individual  
is fleeing.

11) Federal Regulations under 7 CFR 273.11 n state, in part:

Fleeing felons and probation or parole violators. Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of New Jersey, a high misdemeanor) or who are violating a condition of probation or parole under a Federal or State law shall not be considered eligible household members. The income and resources of the ineligible member shall be handled in accordance with (c)(1) of this section.

12) The only area of dispute involved the claimant's disagreement with being classified as a fleeing felon. The Department determined that the claimant was a fleeing felon as she had outstanding warrants in the state of [REDACTED] which were issued in February, 2007. The claimant testified that the State Bureau of Investigations in [REDACTED] advised her to complete her rehabilitation in West Virginia before surrendering to the warrants in [REDACTED]. The claimant was allowed five (5) days to provide verification of her statement from the State of [REDACTED]. The State Hearing Officer received no such statement substantiating the claimant's testimony. Since there are warrants outstanding for the claimant's arrest in the State of [REDACTED] the State Hearing Officer finds that the claimant is a fleeing felon by virtue of her refusal to surrender to the warrants, whether or not she has been advised to do so by the State of [REDACTED].

## 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 determined to be a fleeing felon. The claimant has outstanding warrants for her arrest due to three (3) drug related charges in [REDACTED] and has failed to surrender to the warrants.
- 2) Federal Regulations in 7 CFR 273.11 m state that an individual fleeing to avoid prosecution for a crime classified as a felony shall not be considered an eligible household member for Food Stamp purposes. The claimant is a fleeing felon who is not 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 for as long as the individual is identified in the category of a fleeing felon.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the action of the Department to close the Food Stamp case effective 4-30-07.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 11th Day of May, 2007.**

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**Thomas M. Smith**  
**State Hearing Officer**