



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

July 24, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 20, 2007. Your hearing request was based on the Department of Health and Human Resources' action to close your Food Stamp Program case effective July 31, 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: 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 August 17, 2005 to two (2) felony offenses 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 close your Food Stamp Program case effective July 31, 2007.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
John O'Dell, Dept. Hearing Rep.

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

_____,

Claimant,

v.

Action Number: 07-BOR-1634

**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 July 20, 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 July 20, 2007 on a timely appeal filed June 24, 2007.

It should be noted here that the claimant's benefits were continued 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. John O'Dell, 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 close the Food Stamp Program case effective July 2007 due to drug felony conviction.

V. APPLICABLE POLICY:

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHHR-1 Copy of form IG-BR-29.
DHHR-2 Copy of form IG-BR-40.
DHHR-3 Copy of hearing request dated 6-25-07.
DHHR-4 Copy of notification letter dated 6-25-07 (3 pages).
DHHR-5 Copy of Court Judgments dated 8-17-05 (8 pages).
DHHR-6 Copy of WV Income Maintenance Manual Section 9.1 (15 pages).

Claimants' Exhibits:

None.

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient of Food Stamps when she reported on 6-19-07 that she had two (2) misdemeanor convictions in ██████ County, ██████
- 2) The caseworker contacted the Prosecutor's Office in ██████ County, ██████ and obtained verification of two (2) drug felony convictions on 8-17-05 (Exhibit #DHHR-5). The claimant pled guilty to one count of trafficking in drugs, a violation of Section 2925.03 (A) of the ██████ Revised Code and a felony of the fourth Degree and another count of trafficking in drugs, a violation of Section 2925.03 (A) of the ██████ Revised Code and a felony of the fifth degree.
- 3) Action was taken by the caseworker to close the Food Stamp case effective July 31, 2007 with written notification issued on 6-25-07 (Exhibit #DHHR-4).
- 4) The claimant requested a hearing on 6-25-07.

5) The claimant testified that she understands that the policy is federal law but it is not fair as a person can kill someone and not be penalized for Food Stamps.

6) 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

7) 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.”

8) The only area of dispute involved the claimant’s disagreement with the policy. The claimant did not dispute that she had two (2) felony drug convictions on or after 8-23-96 but disagreed with the regulations which excluded her from participation in the Food Stamp Program. However, the State Hearing Officer finds that the State regulations on excluding individuals from Food Stamp participation if convicted of a drug felony on or after 8-23-96 are in compliance with Federal Regulations.

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 two (2) drug felonies which occurred after 8-23-96 as she pled guilty and was sentenced on 8-17-05.
- 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 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 close the Food Stamp Program case effective July 31, 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of July, 2007.

Thomas M. Smith
State Hearing Officer