



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

November 9, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 6, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for Food Stamp benefits based on a felony drug conviction.

In arriving at a decision, the State Hearings 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 and benefit levels for the Food Stamp Program are based on current policy and regulations. Some of these regulations state individuals convicted of a felony offense which occurred on or after August 23, 1996 which involved possession, use or distribution of a controlled substance as defined by section 802(6) of the Controlled Substance Act are permanently excluded from participation in the Food Stamp Program. {West Virginia Income Maintenance Manual, Chapter 9.1 and 7 CFR ' 273.11(m) - Code of Federal Regulations}

The information submitted at your hearing reveals that you are a convicted drug felon and therefore permanently disqualified from participation in the Food Stamp Program.

It is the decision of the State Hearings Officer to **uphold** the action of the Department in denying your August 21, 2007 application for benefits through the Food Stamp Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Ann Cummings, ESW, DHHR

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

_____,

Claimant,

v.

Action Number: 07-BOR-2314

**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 November 9, 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 November 6, 2007 on a timely appeal filed October 10, 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:

_____, Claimant
Ann Cummings, ESW, DHHR

Presiding at the Hearing was Thomas E. Arnett, 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 is correct in its action to deny the Claimant's application for Food Stamp benefits based on a felony drug conviction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 9.1
7 CFR ' 273.11 - Code of Federal Regulations
21 U.S.C. 802 & 806

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Notice of Decision dated 8/27/07

D-2 WVIMM, Chapter 9.1.A.2.g

*D-3 INDICTMENT / COMMITMENT ORDER, CRIMINAL ACTION # 04-f-91

*Indicates Exhibit was received subsequent to the hearing

VII. FINDINGS OF FACT:

- 1) On or about August 27, 2007, the Claimant was notified via a Notice of Decision (Exhibit D-1) that his August 21, 2007 application for benefits through the Food Stamp Program was denied. This notice states that the Claimant was disqualified for a drug felony violation.
- 2) The evidence indicates that the Claimant was released from prison and was determined to be eligible for Food Stamp benefits in May 2007 in the [REDACTED] County [REDACTED] West Virginia Department of Health and Human Resources Office, hereinafter Department. The Claimant reportedly received Food Stamp benefits for the period of May, June and July 2007, but benefits were closed when he moved to the State of [REDACTED]
- 3) Testimony received at the hearing reveals that the Claimant returned to [REDACTED] West Virginia and was subsequently denied Food Stamp benefits in August 2007 (D-1) when a drug felony conviction was verified by a Department Worker by a phone call with the Department of Corrections.

- 4) The Claimant purported that while he was convicted of a drug felony, his conviction does not meet the policy disqualification requirements of possession or distribution. He alleges that he was trying to obtain a controlled substance and was convicted on conspiracy.
- 5) The record remained open for a period of ten (10) days to allow the Department an opportunity to secure the felony conviction. Exhibit D-3 was received on November 8, 2007 and indicates that the Claimant was indicted on two counts – (1) Obtain Possession of a Controlled Substance by Misrepresentation, etc. WV Codes §60A-4-403(a)(3) & §60A-2-208(b)(6) and (2), Conspiracy WV Code §61-10-31(1).

The Commitment Order verifies that the Claimant was convicted of Count 2 – Conspiracy, on December 3, 2004.

- 6) The WVIMM, Chapter 9.1, provides information about Food Stamp eligibility determination groups and states that individuals convicted of a felony offense which occurred on or after August 23, 1996 which involved possession, use or distribution of a controlled substance as defined by section 802(6) of the Controlled Substance Act are permanently excluded from participation in the Food Stamp Program.
- 7) The Substance Control Act, found in 21 U.S.C 802 (6) states - The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.
- 8) Regulations found in 21 U.S.C. 802 (44) states - The term "felony drug offense" means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances.
- 9) Regulations found in 21 U.S.C. 846 states – Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern the Food Stamp Program state that individuals convicted of a felony offense which occurred on or after August 23, 1996 which involved possession, use or distribution of a controlled substance as defined by section 802(6) of the Controlled Substance Act are permanently excluded from participation in the Food Stamp Program.
- 2) The regulations further state that any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

- 3) Because the Claimant's objective of the conspiracy was to obtain controlled substances, as defined in the Substance Control Act, he is subject to the same penalties under law and is therefore a convicted drug felon.
- 4) Based on the evidence, the Department's action to deny the Claimant's application based on a drug felony conviction is affirmed.

IX. DECISION:

It is the decision of the State Hearings Officer to **uphold** the action of the Department denying your August 21, 2007 application for benefits through the Food Stamp Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th Day of November, 2007.

**Thomas E. Arnett
State Hearing Officer**