



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 19, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 13, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your Food Stamp application because you are a convicted drug felon.

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 for the Food Stamp Program is based on current policy and regulations. Some of these regulations state as follows:

Individuals excluded by law are persons who are excluded by law as found ... ineligible and may not be a separate AG (Assistance Group). The periods of ineligibility are as follows: 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 802 (6) of the Controlled Substance Act – Permanently. (West Virginia Income Maintenance Manual Section 9.1 A (2) (g) Individuals Excluded by Law).

The information submitted at your hearing revealed: (1) You were convicted upon a plea of guilty of the charge: Conspiracy to commit a felony of operating a clandestine drug laboratory; (2) The Policy found at 9.1 A (2) (g) does not include the term "manufacture" as stated in 21 USC Sec. 802 (15) under "Definitions"; and finally (3) You are permanently disqualified from receiving Food Stamp Benefits.

It is the decision of the State Hearings Officer to **UPHOLD** the **ACTION** of the Department to **DENY** the Claimant's Food Stamp application.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review; Ms. Janice Rhodes, ESW

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

_____,

Claimant,

v.

Action Number: 07-BOR-997

**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 April 19, 2007 for Mr. _____. 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 April 13, 2007 on a timely appeal filed March 27, 2007.

It should be noted here that the Claimant was not receiving Food Stamp Benefits at the time of the hearing. A pre-hearing conference was held between the Claimant and the Department prior to the hearing, and the Claimant did not have legal counsel.

II. PROGRAM PURPOSE:

The Program entitled Food Stamps 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
_____, Witness

Janice Rhodes, Economic Services Worker – Roane DHHR Office

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided: Should Mr. _____ be permanently disqualified from receiving Food Stamp benefits?

V. APPLICABLE POLICY:

TITLE 21 - FOOD AND DRUGS; CHAPTER 13 - DRUG ABUSE PREVENTION AND CONTROL; SUBCHAPTER I - CONTROL AND ENFORCEMENT; PART A - INTRODUCTORY PROVISIONS; Section 801 (2) Congressional findings and declarations: controlled substances; Section 801a. (1) Congressional findings and declarations: psychotropic substances; and Section 802 (6) & (15) Definitions

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated 03/23/07
- D-2 WVIMM Section 9.1 (h) Individuals excluded by law
- D-3 Rights and Responsibilities for Food Stamp Program #3 (A)
- D-4 Official Certificate of Discharge dated 09/06/06

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant applied for Food Stamps with the [REDACTED] County DHHR Office on March 9, 2007.
- 2) The Department denied the application on March 23, 2007. The Claimant was disqualified from the Food Stamp Program for having a felony drug conviction (D-1).
- 3) The Policy (D-2), used to deny the Food Stamp application was West Virginia Income Maintenance Manual 9.1 A (2) (g) which states:

Individuals excluded by law are persons who are excluded by law as found below are ineligible and may not be a separate AG (Assistance Group). The periods of ineligibility are as follows: 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 802 (6) of the Controlled Substance Act – Permanently.

- 4) The Claimant contends that he was not convicted of possession or distribution.
- 5) The COMMITMENT by the Circuit Court of [REDACTED] County, West Virginia in Felony Case Number [REDACTED] (D-3) states in part:

IT IS ADJUDGED that the defendant has been convicted upon a plea of guilty of the offense as charged: CONSPIRACY TO COMMIT A FELONY OF OPERATING A CLANDESTINE DRUG LABORATORY a felony, as charged in COUNT III of the indictment in 05-F-70, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

- 6) The State of West Virginia Division of Corrections issued an Official Certificate of Discharge to the Claimant on September 6, 2006 (D-4).
- 7) The policy previously stated under 9.1 A (2) (g) does not fully comply with the Federal Statutes.
- 8) TITLE 21 - FOOD AND DRUGS; CHAPTER 13 - DRUG ABUSE PREVENTION AND CONTROL; SUBCHAPTER I - CONTROL AND ENFORCEMENT; PART A - INTRODUCTORY PROVISIONS Section 801 (2) Congressional findings and declarations: controlled substances states:

The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.

- 9) TITLE 21 - FOOD AND DRUGS; CHAPTER 13 - DRUG ABUSE PREVENTION AND CONTROL; SUBCHAPTER I - CONTROL AND ENFORCEMENT; PART A - INTRODUCTORY PROVISIONS Section 801a. (1) Congressional findings and declarations: psychotropic substances states:

The Congress has long recognized the danger involved in the manufacture, distribution, and use of certain psychotropic substances for nonscientific and nonmedical purposes, and has provided strong and effective legislation to control illicit trafficking and to regulate legitimate uses of psychotropic substances in this country. Abuse of psychotropic substances has become a phenomenon common to many countries, however, and is not confined to national borders. It is, therefore, essential that the United States cooperate with other nations in establishing effective controls over international traffic in such substances.

- 10) The Federal Statutes stated in Findings of Fact #8 and #9 clearly indicate it was the finding and declaration of Congress to include "manufacturing of controlled substances" as a felony offense.
- 11) TITLE 21 - FOOD AND DRUGS; CHAPTER 13 - DRUG ABUSE PREVENTION AND CONTROL; SUBCHAPTER I - CONTROL AND ENFORCEMENT; PART A - INTRODUCTORY PROVISIONS Section 802 (6) & (15) Definitions states:

(6) 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.

(15) The term "manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term "manufacturer" means a person who manufactures a drug or other substance.

- 12) The Claimant's felony conviction on CONSPIRACY TO COMMIT A FELONY OF OPERATING A CLANDESTINE DRUG LABORATORY falls into the category of manufacturing a controlled substance.

VIII. CONCLUSIONS OF LAW:

- 1) The Claimant was convicted of a felony for CONSPIRACY TO COMMIT A FELONY OF OPERATING A CLANDESTINE DRUG LABORATORY; and
- 2) TITLE 21 - FOOD AND DRUGS; CHAPTER 13 - DRUG ABUSE PREVENTION AND CONTROL; SUBCHAPTER I - CONTROL AND ENFORCEMENT; PART A - INTRODUCTORY PROVISIONS Section 802 (15) defines the manufacture of controlled substances as an illegal activity.
- 3) The Claimant's felony conviction falls into the category of the manufacturing of a controlled substance.

IX. DECISION:

It is the decision of this State Hearing Officer to **UPHOLD** the **ACTION** of the Department to **DENY** the Claimant's Food Stamp application

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of April, 2007.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer