



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

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

June 24, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 23, 2010. Your hearing request was based on the Department of Health and Human Resources' action to deny your April 30, 2010 application for Supplemental Nutrition Assistance Program (SNAP).

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 SNAP is based on current policy and regulations. One of these regulations states that individuals convicted of a felony offense which occurred on or after August 23, 1996 and 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 SNAP. (West Virginia Income Maintenance Manual Chapter 9.1, A, 2, g)

Based on information submitted at the hearing, the Department's action to deny your SNAP application based on a drug felony conviction is correct.

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny your SNAP application.

Sincerely,

Cheryl A. Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Tera Pendleton, [REDACTED] DHHR

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

-----,

Claimant,

v.

Action Number: 10-BOR-1311

**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 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 June 23, 2010, on a timely appeal filed May 14, 2010.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (SNAP) 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 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

-----, Claimant's mother

Tera Pendleton, Income Maintenance Worker, Kanawha DHHR

Presiding at the hearing was Cheryl A. Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department's action to deny the Claimant's April 30, 2010 SNAP application based on a drug felony conviction is correct.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 9.1, A, 2, g
Code of Federal Regulations 7 CFR Section 273.11 (m)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Comments from RAPIDS computer system
- D-2 Prisoner Match Information Display Screen from RAPIDS computer system
- D-3 Program Disqualifications screen from RAPIDS computer system
- D-4 Notification letter dated May 3, 2010

Claimant's Exhibits:

- C-1 Social Security Administration award decision

VII. FINDINGS OF FACT:

- 1) The Claimant submitted an application (D-1) to the Department for Supplemental Nutrition Assistance Program (SNAP) on or about April 30, 2010. The Department documented that the Claimant admitted he was a drug felon during the application process.
- 2) The Department denied the SNAP application on April 30, 2010 based on the reported information that the Claimant was a drug felon.
- 3) The Department's representative, Tera Pendleton, testified that the Department confirmed the drug felony conviction by contacting the local jail.
- 4) The Claimant's mother, -----, represented the Claimant during the hearing. She testified that the Claimant entered a guilty plea to possession of drugs in March 2004 in order to receive a reduced sentence.
- 5) The Claimant testified that he was advised to "plead guilty and I would not do any time." He stated he is on disability and needs his SNAP. He stated he does not take drugs but was placed in a bad situation by being in a car with individuals who had drugs when stopped by the authorities.

- 6) ----- testified that the Claimant has always been a handful but has no history of using drugs. She added that he has mental issues and cannot keep a job. She added that she manages his money and he does not receive enough to pay living expenses and also buy food. ----- stated that although he has been convicted of a drug felony, he should be excused from this policy because of the circumstances surrounding his conviction and his mental status.
- 7) ----- presented as evidence (C-1) the Social Security Administration decision which she says documents his mental issues. The document provides that the Administrative Law Judge determined that the Claimant has several severe impairments as determined under Social Security Regulations. The judge found that the Claimant has Affective Disorder, Personality Disorder, and Panic Disorder. The decision corroborates the testimony provided by the witnesses for the Claimant in regard to his lack of ability to keep a job, and his difficulty in interacting with people.
- 8) West Virginia Income Maintenance Manual Section 9.1, A, 2, g (D-1) provides information about SNAP 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 SNAP.
- 9) The Code of Federal Regulations found at 7 CFR Section 273.11 (m) concerns individuals convicted of drug-related felonies. This section states that an individual convicted (under Federal or State law) of any offense 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 (as defined in Section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6)) shall not be considered an eligible household member (for the Food Stamp Program) 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. If the State Legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. Ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996. The income and resources of individuals subject to disqualification under this paragraph (m) shall be treated in accordance with the procedures at paragraph (c) (1) of this section.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that individuals convicted of a felony offense which occurred on or after August 23, 1996 and 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 SNAP.
- 2) The Claimant informed the Department of his drug felony conviction during the SNAP application process and the Department determined that the conviction meets the criteria for permanent SNAP disqualification. There are no exceptions found to this policy.

- 3) The Department was correct in its decision to deny the Claimant's April 30, 2010 SNAP application due to the fact that his March 2004 felony drug conviction renders him permanently disqualified from eligibility for the program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny the Claimant's SNAP benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of June, 2010.

**Cheryl A. Henson
State Hearing Officer**