



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

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D.
Cabinet Secretary

June 15, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 7, 2012. Your hearing request was based on the Department of Health and Human Resources' determination of your SNAP benefits based on a program disqualification.

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. Some of these regulations state that an individual 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, is ineligible for SNAP (West Virginia Income Maintenance Manual, Chapter 9.1.A.2.g).

The information submitted at your hearing revealed that you were convicted of such a felony and must be excluded from SNAP eligibility.

It is the decision of the State Hearing Officer to **uphold** the Department action to determine your SNAP benefits based on your program disqualification.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Melissa Michaels, Department Representative

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1140

**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 June 15, 2012, 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 7, 2012, on a timely appeal filed April 18, 2012.

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
Melissa Michaels, Department representative

All persons offering testimony were placed under oath.

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct to determine the Claimant's SNAP benefits based on a program disqualification.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 9.1.A.2.g

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice dated April 12, 2012
- D-2 West Virginia Income Maintenance Manual, Chapter 9.1.A.2.g
- D-3 Verification from ----- County Circuit Clerk
- D-4 Case comments screen prints
- D-5 Hearing request form
- D-6 Hearing/Grievance Request Notification form

VII. FINDINGS OF FACT:

- 1) Melissa Michaels, representative for the Department, testified that the Claimant applied for SNAP benefits and was issued notification (Exhibit D-1) on April 12, 2012, approving monthly SNAP benefits in the amount of \$200.00. The notice, however, explains that -----, the Claimant's son, is eligible for the benefits, and that the Claimant is excluded as ineligible. The notice states, in pertinent part:

The following individuals are ineligible.

Disqualified for a Drug Felony Violation.

- 2) The Department presented verification (Exhibit D-3) of the Claimant's prior drug felony from the ----- County Circuit Clerk. However, the Claimant had no dispute of this fact. The Claimant testified that he has changed since the drug felony conviction, and feels discriminated against by the policy requiring his exclusion from the SNAP benefits. He testified that he has to cut back on what he eats so that his son can eat what he needs from the food provided by SNAP purchases. He testified that this is not in the best interest of his health considering his medical problems, and that these medical problems prevent him from being able to work and purchase food separately.

- 3) The West Virginia Income Maintenance Manual, Chapter 9.1.A.2, provides a list of individuals who reside with an assistance group but are not considered assistance group members or are ineligible to be included in the assistance group. At §9.1.A.2.g, this policy states, as follows:

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
Receipt of simultaneous multiple benefits as determined by an ADH or conviction in a state or federal court, due to a fraudulent statement with respect to identity or place of residence.	10 years
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	Ineligible while identified in this category
Violating a condition of probation or parole which was imposed under federal or state law.	Ineligible as long as the violation continues
Trafficking in SNAP benefits prior to 8/23/96, for an amount less than \$500, which resulted in a conviction, an agreement which results in a court finding, rather than a conviction or a signed disqualification agreement. See item i below for trafficking SNAP benefits for a controlled substance.	Permanent
Convicted on or after 8/23/96 of trafficking in SNAP benefits involving \$500 or more.	Permanent
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	Permanent

VIII. CONCLUSION OF LAW:

SNAP policy excludes by law individuals convicted of a felony offense 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. There is no dispute of the fact that the Claimant meets these criteria. The policy does not provide exceptions. The Department was correct to determine the SNAP benefits of the Claimant based on an existing program disqualification.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to determine the SNAP benefits of the Claimant based on an existing program disqualification.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of June, 2012.

Todd Thornton
State Hearing Officer