



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

August 1, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 25, 2012. Your hearing request was based on the Department of Health and Human Resources' action to deny your Supplemental Nutrition Assistance Program (SNAP) benefits.

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 benefits 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 benefits 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 benefits.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Mark Kennedy, WVDHHR

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1351

**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 via telephone on July 25, 2012, on a timely appeal filed May 22, 2012, and received by the Hearing Officer on June 11, 2012. The hearing was originally scheduled for July 12, 2012, but was rescheduled by the Hearing Officer due to a scheduling conflict.

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

Amanda Smith, Economic Service Supervisor, WVDHHR

Beverly Fox, Economic Service Worker, WVDHHR

Presiding at the hearing was Pamela L. Hinzman, 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 SNAP benefits based on a felony drug 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 Notice of Decision dated May 31, 2012
- D-2 West Virginia Income Maintenance Manual Chapter 9.1.A.2.g
- D-3 Order, Circuit Court of ----- ounty, West Virginia, entered March 7, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant applied for Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, benefits on May 10, 2012.
- 2) The Claimant was informed via a Notice of Decision (D-1) dated May 31, 2012, that his SNAP application was denied because he is disqualified from the program based on the commission of a drug felony violation.
- 3) WVDHHR Economic Service Supervisor Amanda Smith provided Exhibit D-3, an Order from the Circuit Court of ----- County, West Virginia, entered on March 7, 2007, which indicates that the Claimant plead guilty to a felony charge of attempting to acquire and obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception and subterfuge.
- 4) The Claimant testified that he had forged a physician's name on a prescription pad and was told that the charges against him were not drug charges, but forgery charges. He stated that he never actually obtained any drugs in conjunction with the incident.
- 5) West Virginia Income Maintenance Manual Chapter 9.1.A.2.g (D-2) 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.

- 6) 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) While the Claimant testified that he was convicted of a forgery offense in 2007 rather than a drug-related felony, his conviction clearly bears the element of intent to obtain or possess a controlled substance. Therefore, the Department was correct in applying a drug felony disqualification penalty.

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 1st Day of August, 2012.

**Pamela L. Hinzman
State Hearing Officer**