



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

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

March 1, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 15, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny your Supplemental Nutrition Assistance Program (SNAP) application.

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. These regulations provide that an individual convicted of any offense which is 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 Substances Act) shall not be considered an eligible household member to participate in SNAP (Code of Federal Regulations – 7CFR § 273.11(m)).

The information submitted at your hearing revealed that you were convicted of conspiracy to commit a felony, which does not include an element of possession, use, or distribution of a controlled substance. Without a conviction with a drug-related element, there can be no disqualification from SNAP.

It is the decision of the State Hearing Officer to **Reverse** the action of the Department to deny you SNAP benefits.

Sincerely,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Melissa Blake, Economic Service Worker

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

**IN RE:**     -----,

**Claimant**

**v.**

**ACTION NO.: 11-BOR-2596**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondents**

**DECISION OF STATE HEARING OFFICER**

**I.     INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on February 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 a timely appeal, filed December 16, 2011.

**II.    PROGRAM PURPOSE:**

The program entitled Supplemental Nutrition Assistance Program is administered by the West Virginia Department of Health and Human Resources.

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  
Sylvia Proffitt, Economic Service Worker

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department correctly denied Claimant SNAP benefits.

**V. APPLICABLE POLICY:**

WV Income Maintenance Manual § 9.1 A  
Code of Federal Regulations – 7CFR § 273.11(m)

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Department's Summary
- D-2 Hearing Request received December 16, 2011
- D-3 Scheduling Order
- D-4 Denial Notification Letter dated November 22, 2011
- D-5 Combined Application and Review Form and Rights and Responsibilities Form dated November 18, 2011
- D-6 Case Comments (CMCC) from RAPIDS Computer System
- D-7 Offender Details from [REDACTED] Parole Office
- D-8 [REDACTED] County Circuit Court Plea Order dated February 4, 2009
- D-9 WV Income Maintenance Manual § 9.1 A(1)g

**VII. FINDINGS OF FACT:**

- 1) Claimant applied for SNAP on November 18, 2011. The caseworker questioned Claimant about his status as a drug felon. Claimant admitted being recently released from prison but denied that he was convicted of a drug charge. Verification of Claimant's conviction was requested by the caseworker (D-6).
- 2) Claimant provided his plea agreement on December 16, 2011 to his caseworker. According to a [REDACTED] County Circuit Court Plea Order dated February 4, 2009, Claimant pled guilty to a conspiracy to commit a felony. Additional documentation was received from the [REDACTED] Parole Office stating Claimant was released from prison on August 8, 2011. His incarceration was due to a conspiracy to commit a felony in the manufacture/delivery of a controlled narcotic substance (D-7 and D-8). Based on this information, Claimant's application for SNAP was denied due to his drug-related felony conviction (D-4).
- 3) Claimant testified he was arrested for driving a person who had possession of marijuana with the intent to sell. The court ordered a sixty (60) day evaluation during which he

tested positive for cocaine. Claimant stated he had no idea how he tested positive for cocaine unless some of his medications at the time caused the positive test result. Claimant stated had he not had the positive drug test, he would have only received probation.

Claimant testified he did not feel he should be disqualified from SNAP because his conviction did not state it was a drug felony.

- 4) The Plea Order from the [REDACTED] County Circuit Court shows that, based on the Claimant's plea, he was found guilty of conspiracy to commit a felony. The Plea Order contains no language related to any drug offense (D-8). An "elements of crime" is defined as "those constituent parts of a crime which must be proved by the prosecution to sustain a conviction."

- 5) WV Income Maintenance Manual § 9.1 A(1)g states:

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:

**REASON FOR EXCLUSION**

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.

**LENGTH OF EXCLUSION**

Permanent

- 6) Code of Federal Regulations – 7CFR § 273.11(m) states:

An individual convicted (under Federal or State law) of any offense which is 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 Substances Act) shall not be considered an eligible household member 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.

## **VIII. CONCLUSIONS OF LAW:**

- 1) Federal regulations and policy stipulates that an individual convicted of a felony involving the possession, use or distribution of a controlled substance is permanently disqualified for participation in SNAP.

- 2) Claimant was convicted of conspiracy to commit a felony. It is clear from the Plea Order that the offense of which Claimant was convicted did not have an element of possession, use or distribution of a controlled substance and thus the offense should not cause disqualification from SNAP.
- 3) The Department incorrectly denied Claimant's SNAP application by considering him an ineligible participant as a drug felon.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to deny Claimant SNAP benefits.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 1<sup>st</sup> day of March 2012**

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**Kristi Logan**  
**State Hearing Officer**