



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia**

**Earl Ray Tomblin
Governor**

**Karen L. Bowling
Cabinet Secretary**

February 25, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-3352

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Donna L. Toler
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Darlene F. Smith, Economic Service Supervisor

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

██████████,

Appellant,

v.

Action Number: 15-BOR-3352

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

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on December 8, 2015, on an appeal filed October 28, 2015.

The matter before the Hearing Officer arises from the October 21, 2015 decision by the Respondent to terminate the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Darlene Smith, Economic Service Supervisor. Appearing as a witness for the Respondent was Sandy Kerby, Economic Service Worker. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, her roommate. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Sentence Sheet, Indictment Number 13-05-1288E, Count 2, 2-year suspended sentence
- D-2 West Virginia Income Maintenance Manual §9.1.A.2.g, Eligibility Determination Groups (excerpt)
- D-3 E-mail Correspondence from ██████████ to Darlene Smith, dated October 28, 2015

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On October 21, 2015, the Respondent mailed notice to the Appellant that her Supplemental Nutrition Assistance Program (SNAP) application was denied because she was disqualified due to a drug felony violation.
- 2) In 2014, the Appellant was convicted in the State of [REDACTED] for an indictable drug offense. Her conviction was for a second-degree possession and distribution of marijuana offense, punishable by five (5) to ten (10) years in state prison. The Appellant received a two (2) year suspended sentence. (Exhibits D-1 and D-3)
- 3) The Appellant contended that her conviction was defined as an indictable offense, not a felony offense, and that the drug felony disqualification should not be applied to her SNAP benefits.

APPLICABLE POLICY

Policy found in the West Virginia Income Maintenance Manual §9.1.A.2.g, provides that individuals convicted of a felony offense which occurred after August 22, 1996, which involved possession, use or distribution of a controlled substance, as defined by Section 802 (6) of the Controlled Substance Act, are excluded by law, and therefore, ineligible for SNAP benefits.

Title 21, United States Code, Controlled Substance Act, Subchapter I, Part A (44), reads as follows:

The term “drug felony offense” means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.

DISCUSSION

The Appellant’s application for SNAP benefits was denied due to the Appellant’s 2014 felony drug conviction. The Appellant was ineligible to receive benefits because she was convicted of a drug felony after August 22, 1996.

The Appellant contended that her conviction was for an indictable drug possession and distribution offense, not a felony drug offense. The State of [REDACTED] defines crimes

punishable by one (1) year or more in state prison as indictable offenses as opposed to felony offenses. However, SNAP benefits are subject to the United States Controlled Substance Act. For SNAP benefit purposes, a conviction of more than a year for the possession or distribution of a controlled substance under any law of the United States or of any State is defined as a felony offense.

Policy provides that individuals convicted of a felony drug offense after August 22, 1996, are ineligible for SNAP benefits, therefore the Department was correct in its decision to deny the Appellant's application for SNAP benefits.

CONCLUSION OF LAW

Pursuant to Section 802 (6) of the Controlled Substance Act, and policy found in the West Virginia Income Maintenance Manual, the Appellant is a convicted drug felon, and is therefore, ineligible to receive SNAP benefits.

DECISION

It is the decision of the State Hearing Officer to **uphold** Respondent's action to terminate the Appellant's SNAP benefits effective November 1, 2015.

ENTERED this ____ Day of December 2015.

Donna L. Toler
State Hearing Officer