



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

Karen L. Bowling
Cabinet Secretary

January 23, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 14-BOR-3676

Dear Mr. [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,

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

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

cc: Patricia Wentz, WVDHHR

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

██████████,

Claimant,

v.

Action Number: 14-BOR-3676

**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 January 14, 2015, on an appeal filed November 18, 2014.

The matter before the Hearing Officer arises from the November 19, 2014 decision by the Respondent to deny Supplemental Nutrition Assistance Program (SNAP) benefits based on the Claimant's drug felony conviction.

At the hearing, the Respondent appeared by Patricia Wentz, Economic Service Worker, WVDHHR. The Claimant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 SNAP application dated November 18, 2014
- D-2 West Virginia Division of Corrections identification card
- D-3 Code of Federal Regulations 21 CFR Part 1308
- D-4 Electronic Mail Transmission from ██████████, ██████████, to ██████████ dated November 19, 2014
- D-5 West Virginia Income Maintenance Manual Chapter 9.1.A.2.g
- D-6 Pre-Hearing Conference and/or Fair Hearing Request Forms signed by Claimant on November 18, 2014 and November 20, 2014
- D-7 Notice of Decision dated November 19, 2014
- D-8 Notice of Decision dated July 12, 2011
- D-9 Notice of Decision dated August 23, 2011
- D-10 Workforce West Virginia information

- D-11 West Virginia Income Maintenance Manual Chapter 13.5
- D-12 Electronic mail transmission dated November 19, 2014
- D-13 Electronic mail transmission dated November 25, 2014

Claimant's Exhibits:

- C-1 Indictment information from [REDACTED] Circuit Court (It should be noted that the hearing record remained open until January 26, 2015, to allow for the submission of Exhibit C-1. This exhibit was submitted to the Hearing Officer on January 20, 2015)

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) The Claimant applied for Supplemental Nutrition Assistance Program (SNAP) benefits on November 18, 2014 (see Exhibit D-1) and was notified by the Department on November 19, 2014 (D-7) that SNAP benefits were denied because he is disqualified from the program by policy due to a drug felony conviction.
- 2) Exhibit C-1, information from [REDACTED] Circuit Court, indicates that the Claimant was indicted for possessing methcathinone, a Schedule 1 non-narcotic controlled substance also known as bath salts, with the intent to deliver, as the result of an offense that occurred on October 5, 2011. Patricia Wentz, Economic Service Worker (ESW) with the Respondent, presented Exhibit D-4, an electronic mail transmission from [REDACTED] confirming that the Claimant's conviction date was August 3, 2013.
- 3) The Claimant contends that the drug felony conviction should not be held against him because methcathinone was not placed on Schedule I of the Controlled Substance Act until October 21, 2011 (see Exhibit D-3), following the commission of the offense on October 5, 2011. He pointed out that individuals who commit offenses such as murder and child molestation are not disqualified from SNAP benefits, and questioned why the policy applies only to drug felons.

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 9.1.A.2.g (D-5) 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.

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.

DISCUSSION

SNAP policy clearly states that an individual **convicted** [emphasis added] of a drug 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. The Claimant committed a drug felony offense involving methcathinone (bath salts) on October 5, 2011; however, records reveal that he was not convicted of the offense until August 8, 2013. While the Claimant contends that methcathinone was not listed on Schedule I of the Controlled Substance Act until October 21, 2011 - after his offense was committed – it was added to the Schedule prior to his conviction date. Therefore, the Department acted correctly in denying the Claimant's SNAP benefits.

CONCLUSIONS OF LAW

The Department acted correctly in denying the Claimant's SNAP benefits based on a drug felony conviction.

DECISION

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

ENTERED this 23rd Day of January 2015.

**Pamela L. Hinzman
State Hearing Officer**