



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 22, 2016



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-3345

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,

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

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

cc: Angela Jennings, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 15-BOR-3345

**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 originally convened on January 7, 2016, and reconvened on January 13, 2016, on an appeal filed October 27, 2015. The hearing was originally scheduled for December 3, 2015, but was rescheduled due to non-delivery of the Scheduling Order as a result of a change in the Appellant's mailing address.

The matter before the Hearing Officer arises from the Respondent's July 15, 2015 calculation of Supplemental Nutrition Assistance Program (SNAP) benefits, which considered the Appellant's drug felony conviction and deemed income.

At the hearing, the Respondent appeared by Angela Jennings, Family Support Supervisor, WVDHHR. The Appellant was present during the January 7, 2016 hearing and was represented by her husband, ██████████. The Appellant was not present when the hearing reconvened on January 13, 2016, but was represented by ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Program Disqualifications information from Department's computer system
- D-2 West Virginia Income Maintenance Manual Chapter 9.1.A.2.g
- D-3 West Virginia Income Maintenance Manual Chapter 10.4.D.8
- D-4 Notice of Decision dated July 15, 2015
- D-5 Notice of Decision dated January 5, 2016

Appellant's Exhibits:

- A-1 Letter from ██████████ dated December 28, 2015
- A-2 Letter to Appellant from Angela Jennings dated November 20, 2015

- A-3 Hearing/Grievance Request Notification (IG-BR-29)
- A-4 West Virginia Income Maintenance Manual Chapter 9.1.A.2.g
- A-5 [REDACTED] County, WV, Prosecuting Attorney Charges
- A-6 Sentencing Order, Circuit Court of [REDACTED] County, WV, dated July 17, 2002
- A-7 Letter from [REDACTED] and Notices of Decision dated January 5, 2016, and October 23, 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) On July 15, 2015, the Department sent the Appellant a Notice of Decision (D-3), informing her that her Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, benefits would decrease from \$118 to \$16 effective August 2015.
- 2) Angela Jennings, Family Support Supervisor (FSS) with the Department, testified that the Department determined in 2006 that the Appellant's husband, [REDACTED], has a prior drug felony conviction and is, therefore, ineligible to be included in the SNAP benefits (see Exhibit D-1). The Appellant's SNAP benefits decreased in July 2015 because household income increased and Mr. [REDACTED] income must be deemed to the SNAP Assistance Group as required by policy.
- 3) Mr. [REDACTED] maintained that he had only attempted to obtain drugs through use of a forged prescription and never actually obtained the drugs because the pharmacy recognized the false prescription. He does not believe that his conviction falls under the Department's drug felon policy because he did not actually possess, use or distribute a controlled substance (see Exhibits D-2 and A-4). Mr. [REDACTED] further contended that his income should not be deemed for SNAP purposes because he has to use the money to purchase food and other items.
- 4) Exhibit A-6 states that the Appellant's July 2002 drug felony conviction was based on the charge of Attempting to Acquire or Obtain Possession of a Schedule III Controlled Substance (Hydrocodone) by Misrepresentation, Fraud, Forgery, Deception or Subterfuge. The charge carried with it an element of possession.

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 9.1.A.2.g (D-2 and A-4) 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.

West Virginia Income Maintenance Manual Chapter 10.4.D.8 states that the income of persons excluded by law from receiving SNAP benefits is deemed/counted for SNAP purposes as if the person was a member of the Assistance Group.

DISCUSSION

The Code of Federal Regulations and Income Maintenance Policy state that an individual who is convicted of a drug felony offense which occurred on or after August 23, 1996 - which carried an element of 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 Appellant's husband was convicted of attempting to acquire or obtain possession of a controlled substance in 2002. Although the Appellant's husband never actually acquired the drug - because the pharmacy recognized his forged prescription - he was nonetheless convicted of a drug felony and the action carried an element of possession. Therefore, the Appellant's husband has been correctly excluded from the SNAP Assistance Group.

Policy clearly states that the income of an individual excluded by law from SNAP benefits is deemed to the Assistance Group. Therefore, the Department's action in deeming Mr. [REDACTED] income when calculating SNAP benefits is correct.

CONCLUSIONS OF LAW

The Department acted correctly in excluding the Appellant's husband from the SNAP Assistance Group based on his drug felony conviction and correctly deemed his income for SNAP purposes.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's action to exclude the Appellant's husband from the SNAP Assistance Group and deem his income to the Assistance Group.

ENTERED this 22nd Day of January 2016.

Pamela L. Hinzman
State Hearing Officer