



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL

Jim Justice  
Governor

BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Bill J. Crouch  
Cabinet Secretary

February 14, 2017



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 17-BOR-1108

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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

cc: Kelly Davis, [REDACTED] County DHHR

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

██████████,

**Appellant,**

v.

**Action Number: 17-BOR-1108**

**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 February 8, 2017, on an appeal filed January 20, 2017.

The matter before the Hearing Officer arises from the January 3, 2017 decision by the Respondent to permanently disqualify the Appellant from participation in Supplemental Nutrition Assistance Program.

At the hearing, the Respondent appeared by Kelly Davis, Economic Service Worker. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

D-1 Department's Summary

D-2 Judgement in a Criminal Case of the United States District Court dated January 11, 2013

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 Appellant was a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits.

- 2) The Respondent received a Judgment in a Criminal Case of the United States District Court (D-2) dated January 11, 2013. The Appellant was convicted of a felony for Conspiracy to Manufacture Methamphetamine.
- 3) The Respondent notified the Appellant on January 3, 2017, that she was permanently disqualified from participation in SNAP as a convicted drug felon.
- 4) SNAP benefits for the Appellant were terminated effective January 31, 2017.
- 5) The Appellant contested the disqualification, contending that her conviction did not meet the requirements found in policy.

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual §9.1(A)(2)(g)(6) permanently excludes from participation in SNAP individuals convicted of a felony offense which occurred after August 22, 1996, which involved an element of the possession, use or distribution of a controlled substance as defined by section 802.6 of the Controlled Substance Act.

21 United States Code §802.44 of the Controlled Substance Act defines a felony drug offense as 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.

21 United States Code §802.6 of the Controlled Substance Act defines a controlled substance as a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. Methamphetamine is a schedule II controlled substance.

21 United States Code §846 states any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

### **DISCUSSION**

Policy permanently disqualifies any individual from participation in SNAP who was convicted of a felony offense which involved an element of the possession, use or distribution of a controlled substance as defined by section 802.6 of the Controlled Substance Act.

The Appellant was convicted of Conspiracy to Manufacture Methamphetamine, a schedule II controlled substance under the Controlled Substance Act. The Appellant argued that her felony conviction was for manufacturing a controlled substance, and not for possession, use or distribution as set forth in policy.

The Appellant's conviction involves the **element** [emphasis added] of possession, use or distribution of a controlled substance. In manufacturing methamphetamine, the Appellant would

have in her possession a controlled substance, for either use or distribution. The Appellant's argument that her conviction did not specifically meet the criteria found in policy for disqualification from participation in SNAP is without merit.

### **CONCLUSIONS OF LAW**

- 1) Individuals convicted of a felony involving an element of the possession, use or distribution of a controlled substance are permanently disqualified from participation in SNAP.
- 2) The Appellant has a felony conviction of Conspiracy to Manufacture Methamphetamine.
- 3) The Appellant's conviction has an element of possession, use or distribution of a controlled substance, and is therefore permanently disqualified from participation in SNAP.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Respondent's decision to permanently disqualify the Appellant from participation in Supplemental Nutrition Assistance Program (SNAP) benefits.

**ENTERED this 14<sup>th</sup> day of February 2017**

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**Kristi Logan  
State Hearing Officer**