



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

**Jim Justice  
Governor**

**BOARD OF REVIEW  
416 Adams St.  
Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 79326**

**Bill J. Crouch  
Cabinet Secretary**

November 22, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 17-BOR-2640

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 Board of Review is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources (DHHR). 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson  
State Hearing Officer  
State Board of Review

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

cc: David Griffin, [REDACTED] County DHHR

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

██████████,

**Appellant,**

v.

**ACTION NO.: 17-BOR-2640**

**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 November 16, 2017, on an appeal filed October 11, 2017.

The matter before the Hearing Officer arises from the October 10, 2017 decision by the Department to disqualify the Appellant from participation in the Supplemental Nutrition Assistance Program (SNAP).

At the hearing, the Respondent appeared by Carrie Casto, Economic Services Supervisor. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**Department's Exhibits:**

D-1 West Virginia DHHR Notice of Disqualification from SNAP, dated October 10, 2017  
D-2 West Virginia Income Maintenance Manual (WVIMM) §3.2.1. B

**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 following Findings of Fact are set forth.

### **FINDINGS OF FACT**

- 1) On October 2, 2017, the Appellant applied for SNAP benefits and indicated that he had been convicted of a drug felony after August 22, 1996.
- 2) The Appellant has a felony conviction for Conspiracy to Deliver a Controlled Substance.
- 3) Felony convictions after August 22, 1996, involving a controlled substance require a permanent exclusion from receiving SNAP benefits in the state of West Virginia. (Exhibit D-2)
- 4) On October 10, 2017, the Respondent notified the Appellant that due to a Drug Felony Violation disqualification, he was denied eligibility for SNAP benefits. (Exhibit D-1)

### **APPLICABLE POLICY**

#### **West Virginia Income Maintenance Manual (WVIMM) §3.2.1. B provides in part:**

The following individuals who reside with an Assistance Group (AG) are not considered AG members or are ineligible to be included in the AG...

- 3) Persons who are excluded by law and their periods of ineligibility: ...

*Convicted of a Felony Offense that Occurred After 8/22/1996 Involving a Controlled Substance:* The offense involved an element of the possession, use or distribution of a controlled substance as defined by Section 802 (6) of the Controlled Substance Act...

Period of ineligibility: permanent exclusion

#### **21 United States Code §802.44 of the Controlled Substance Act provides in part:**

A felony drug offense is 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 provides in part:**

A controlled substance is a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter.

**21 United States Code §846 of the Controlled Substance Act provides in part:**

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**

The Appellant completed an application for SNAP benefits in which he indicated that he had a history of felony drug conviction which occurred after August 22, 1996. The Respondent denied the Appellant's application for SNAP benefits due to policy permanently disqualifying individuals with certain felony drug convictions from receiving SNAP benefits. The Appellant requested a fair hearing to contest the Respondent's decision to deny his eligibility for SNAP benefits.

The Respondent had to demonstrate by a preponderance of evidence that it followed policy in determining that the Appellant was ineligible to receive SNAP benefits based on the Appellant's history of felony drug convictions occurring after August 22, 1996. The Respondent testified that the Appellant had marked "yes" to having received a felony drug conviction after August 22, 1996, on his October 2, 2017 application for SNAP benefits. The Respondent testified that the Appellant had marked that he had a conviction for conspiracy to deliver illegal drugs. The Appellant contended that he has been on Social Security benefits for over twenty (20) years and had received SNAP benefits after he was convicted for Conspiracy to Deliver a Controlled Substance. The Appellant contended that he has not received any additional charges in the last eight (8) years. The Appellant testified that because of reserving money for bills he cannot afford to buy food and requested that his honesty in reporting his criminal charge "count for something." The Respondent testified that policies regarding drug convictions vary between states and that West Virginia does not have a "five-year-look-back" and policy requires that felony drug charges be subject to a lifetime penalty of SNAP disqualification.

The Respondent demonstrated by a preponderance of evidence that felony Conspiracy to Deliver a Controlled Substance is an element of the possession, use or distribution of a controlled substance as defined by §802 of the Controlled Substance Act and when the conviction occurred after August 22, 1996, is subject to a permanent eligibility exclusion from receiving SNAP benefits. The Respondent's decision to deny the Appellant's application for SNAP benefits due to a permanent disqualification penalty based on a drug felony conviction after August 22, 1996, was correct.

### **CONCLUSIONS OF LAW**

- 1) The Appellant has a felony conviction for Conspiracy to Deliver a Controlled Substance which occurred after August 22, 1996.
- 2) Pursuant to policy, individuals convicted of a felony after August 22, 1996, involving an element of the possession, use or distribution of a controlled substance are permanently disqualified from participating in SNAP.
- 3) The Respondent's decision to deny the Appellant's application for SNAP benefits was correct.

### **DECISION**

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

ENTERED this 22nd day of November 2017.

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**Tara B. Thompson**  
State Hearing Officer