



**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-2758

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: Charissa Reggio, [REDACTED] County DHHR

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

██████████,

Appellant,

v.

ACTION NO.: 17-BOR-2758

**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 30, 2017.

The matter before the Hearing Officer arises from the October 26, 2017 decision by the Department to disqualify the Appellant from participating in the Supplemental Nutrition Assistance Program (SNAP).

At the hearing, the Respondent appeared by Charissa Reggio. 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 27, 2017
- D-2 West Virginia DHHR Notice of Denial due to drug felony and Hearing Request, dated October 26, 2017
- D-3 West Virginia Income Maintenance Manual (WVIMM) §3, page 35

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 an unknown date, the Appellant applied for SNAP benefits. The Respondent testified during the hearing, that at the time of the Appellant's application for SNAP benefits, the Appellant already had a drug felony documented in the Respondent's record.
- 2) During the hearing, the Appellant admitted that he received a felony drug conviction in 2003 and served twelve (12) years in prison and three (3) years on probation.
- 3) Pursuant to policy, felony drug convictions which occurred after August 22, 1996, involving a controlled substance require a permanent exclusion from receiving SNAP benefits in the state of West Virginia.
- 4) On October 26, 2017, the Respondent notified the Appellant that his application for SNAP benefits had been denied due to a drug felony. (Exhibit D-2)
- 5) On October 27, 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. The felony drug conviction the Appellant received after August 22, 1996, had previously been documented in the Respondent's record. 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 conviction which occurred after August 22, 1996. The Respondent testified that at the time of application, the Respondent's record reflected previous documentation that the Appellant possessed a felony drug conviction that disqualified him from receiving SNAP benefits. The Respondent did not clarify that the record documentation demonstrated the felony conviction had occurred after August 22, 1996, or what type of felony drug conviction was documented in the Appellant's record. The Appellant did not clarify what type of felony drug conviction he had received but did testify that he received a felony drug conviction in 2003 and did serve twelve (12) years in prison because of his conviction. The Appellant testified that he had tried to get his conviction expunged but was unable to remove the conviction from his record. The Appellant testified that he did not understand why he was denied because he had heard from friends that had felony drug convictions that he should be eligible to receive SNAP benefits because his friends were SNAP recipients. The Appellant did not indicate when his friends had received their felony drug convictions. The Appellant testified that after paying bills he does not have any money for food and relies on friends and medical service providers to bring him food.

Policy provides that a drug offense is punishable by imprisonment for more than one year under law that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances. Although the Appellant's drug conviction type was not clarified, his testimony that he served twelve (12) years in prison because of a drug conviction meets the definition of felony drug offense as defined in the United States Code. The Appellant's testimony that his felony drug conviction occurred in 2003, demonstrated that his conviction occurred after August 22, 1996, and 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 which occurred after August 22, 1996, was correct.

CONCLUSIONS OF LAW

- 1) The Appellant has a felony drug conviction that 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 to permanently disqualify the Appellant from participation in the Supplemental Nutrition Assistance Program (SNAP).

ENTERED this 22nd day of November 2017.

Tara B. Thompson
State Hearing Officer