



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
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Charleston, West Virginia 25313
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**Jolynn Marra
Interim Inspector General**

August 7, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:19-BOR-1925

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,

Danielle C. Jarrett
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29
cc: Tera Pendleton, Department Representative

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

████████████████████,

Appellant,

v.

Action Number: 19-BOR-1925

**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 July 18, 2019, on an appeal filed June 19, 2019.

The matter before the Hearing Officer arises from the June 7, 2019 decision by the Respondent to terminate the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits for failure to comply with the Able-Bodied Adult Without Dependents (ABAWD) work requirements.

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

Department's Exhibits:

- D-1 eRAPIDS system screenshot printout of Case Comments, February 8, 2019 through June 6, 2019
- D-2 Written correspondence from ██████████, dated February 20, 2019
- D-3 eRAPIDS computer system screenshot printout of ABAWD 36-Month Tracking, dated June 6, 2019
- D-4 Notice of Decision, dated June 7, 2019
- D-5 West Virginia Income Maintenance Manual (WV IMM) § 3.2.1.D.4

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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant was a recipient of SNAP benefits.
- 2) The Appellant meets the definition of ABAWD as defined by policy.
- 3) On February 19, 2019, the Appellant submitted verification of her participation in a drug treatment program to meet an ABAWD exemption. (Exhibits D-1 and D-2)
- 4) In April 2019, the Appellant regularly attended one (1) weekly doctor's appointment, one (1) weekly counseling session, and one (1) weekly group meeting, totaling three (3) days per week of participation in her drug treatment for an unknown number of hours.
- 5) On February 21, 2019, the Respondent's worker approved the Appellant for an ABAWD exemption and SNAP benefits were issued to the Appellant. (Exhibit D-1)
- 6) On February 22, 2019, the Respondent's case record comments reflect that a "15 percent ABAWD homeless exemption has been granted for the month of Mar19." (Exhibit D-1)
- 7) The Respondent determined the Appellant was exempt from ABAWD work requirements for the month of March 2019, due to being chronically homeless.
- 8) The Appellant was given an exemption, in error, from ABAWD work requirements for the month of April 2019, due to her participation in a drug treatment program.
- 9) The Appellant was a recipient of SNAP benefits for the months of February, May, and June 2019, without meeting work requirements or an exemption. (Exhibit D-3)
- 10) On June 6, 2019, the Respondent logged case record comments that the Appellant failed to attend her SNAP Employment and Training (E&T) appointment at the local Department of Health and Human Resources (DHHR) on March 20, 2019. (Exhibit D-1)
- 11) On June 6, 2019, the Respondent logged case records comments that the Appellant's drug treatment program did not include that the Appellant was "unable to work" to qualify for an ABAWD for participation in a drug treatment program. (Exhibit D-1)
- 12) On June 7, 2019, the Respondent issued notice advising the Appellant that she was ineligible for SNAP benefits for failure to comply with ABAWD work requirements, effective July 1, 2019. (Exhibit D-4)

- 13) The June 7, 2019 notice advised the Appellant that her ABAWD 36-month eligibility tracking period began January 2019 and extended through December 2021. The notice included a disclosure of ABAWD requirements and exemptions for continued SNAP eligibility. (Exhibit D-4)

APPLICABLE POLICY

Code of Federal Regulations (CFR) § 273.24 explains that individuals are not eligible to participate in SNAP as a member of any household if the individual received SNAP benefits for more than three countable months during any three-year period...

WV IMM § 3.2.1.D Able-Bodied Adults Without Dependents (ABAWD) provides in part:

- ABAWD is a population of individuals who are age 18 or older, but not yet age 50. An individual who turns 18 becomes an ABAWD in the month following their birthday. An individual is no longer an ABAWD in the month of their 50th birthday.
- Countable Months are months in which the client receives a full monthly benefit while not exempt or meeting the ABAWD work requirement.
- Fulfilling the ABAWD work requirement means working and/or participating in an allowable ABAWD work activity for 20 hours per week or 80 hours per month.
- Three-month limit is the first full three (3) months of SNAP benefits received without meeting the ABAWD work requirements or being exempt.
- Clients regain eligibility by meeting the ABAWD work requirement for a 30-day period prior to application or meet an exemption.

WV IMM § 3.2.1.D.2 reads for a SNAP AG, any individual who meets the definition of an ABAWD and who is normally required to be included in the AG can only receive benefits when he is otherwise eligible and meets the work requirements, has an exemption, or is in his first three-month period while not meeting the ABAWD work requirement or being exempt within the 36-month period.

WV IMM § 3.2.1.D.4 explains that an individual is exempt from the ABAWD work requirement if he is receiving SNAP benefits in a SNAP AG that contains an individual under the age of 18; is responsible for the care of an incapacitated person, whether or not the person receiving the care resides with the client, and whether or not the incapacitated person is a member of the AG; is receiving UCI; is certified as physically or mentally unfit for employment according to the provisions in Section 13.15; is receiving VA disability income; is pregnant, regardless of the expected date of delivery; and a client who receives RSDI, SSI, or any other benefit based on criteria other than disability. Also, an individual may be exempt if they are a regular participant in a drug addiction or alcoholic treatment and rehabilitation program when such participation would prevent the individual from meeting the work requirement or participating in an

employment/training program for the required number of hours. When exempting ABAWDs due to participating in a drug addiction or alcoholic treatment and rehabilitation program, the Worker must verify the number of hours the client must commit to the program to determine if the individual is exempt. (Emphasis added) These exemptions qualify the individual of participate immediately, if otherwise eligible. These exemptions are only applicable to the ABAWD time limit and ABAWD work requirement and do not automatically exempt the individual from the SNAP work requirement in Chapter 14.

WV IMM § 3.2.1.D.5 reads for individuals, regardless of client's status, the first 36-month period began January 2016. The 36- month period remains fixed. Receiving SNAP months without being exempt or meeting the work requirement in another state counts towards the client's three-month limit in West Virginia. The worker must only count such months within the current 36-month period.

WV IMM § 13.15.3 Establishing A Client As Unit For Employment provides in part:

This policy applies only to student policy, SNAP work requirements, and ABAWD policy.

- A client who meets the definition of disability is considered to be unfit for employment. No other verification is needed.
- A client who does not meet the definition of disability should be evaluated for fitness for employment. If it is obvious to the worker that the client is unfit for employment, than no further verification is needed, but thorough case comments must be entered explaining why the client is obviously unfit for employment.
- A client who does not meet the definition of disability and is not obviously unfit for employment will be requested to provide written verification from a licensed medical professional that the client is unfit for employment.
- Chronically Homeless Populations
 - The eligibility worker must evaluate chronically homeless populations for the ability to be fit for employment. The definition of chronic homelessness is the lack of consistent living arrangements, including homeless shelters, for a period of 90 days prior to the date of determination or the client has an extended history that demonstrates a pattern suggesting the inability to find suitable, long term housing.
 - Being chronically homeless, by itself, is not an exemption to the ABAWD time limits, but may be a result of a potential mental or physical condition which renders the individual unfit for employment.

WV IMM § 17.2.1 explains that the DHHR Worker is responsible for making the determination of exemption from participation based on recommendations from the SNAP E&T Worker, referring the case to the SNAP E&T Worker in the eligibility system, and referring all clients subject to the SNAP work requirements, including exempt SNAP E&T participants.

DISCUSSION

The Appellant's SNAP benefits were terminated by the Respondent on the basis that the Appellant received SNAP benefits for three (3) months without complying with the ABAWD work requirement or meeting an exemption. The Respondent testified the Appellant was a recipient of SNAP benefits for the months of February, May, and June 2019, without meeting the work requirement or exemption.

On June 7, 2019, the Respondent issued notice to the Appellant advising her that SNAP benefits would terminate effective, July 1, 2019. The notice indicated that SNAP benefits would terminate due to the Appellant's failure to comply with ABAWD work requirements or meeting an exemption. The notice also advised the Appellant that her ABAWD 36-month eligibility tracking period began January 2019 and extended through December 2021. The notice included a disclosure of ABAWD requirements and exemptions for continued SNAP benefits. The Appellant contested the Respondent's decision to terminate her SNAP benefits.

Policy indicates an ABAWD is defined as an individual between 18 and 50 years of age, having no dependents, no physical or mental disabilities, not responsible for an incapacitated person, and not receiving UCI, VA disability income, RSDI, SSI, or any other benefit based on criteria other than disability. However, policy states that an individual may be exempt from ABAWD if they are a regular participant in a drug addiction or alcoholic treatment and rehabilitation program when such participation would prevent the individual from meeting the work requirement or participating in an employment/training program for the required number of hours. Policy indicates after three months of receiving SNAP and failing to comply with ABAWD work requirements, then the recipient is no longer eligible for SNAP benefits for a period of 36 months. The 36-month period remains fixed.

The Appellant indicated that she did not know that her SNAP benefits terminated until she spoke to a Department worker in February 2019, who explained to her the requirements and exemptions for ABAWD. On February 19, 2019, the Appellant submitted verification of participation in her drug treatment program to meet an ABAWD exemption. The Appellant testified that she regularly attends one (1) weekly doctor's appointment, one (1) weekly counseling session, and one (1) weekly group meeting, totaling three (3) days per week of participation in her drug treatment program. The Appellant added that because she had to attend her drug treatment program three days a week, she has been unsuccessful in finding employment. It is noted that the Respondent's case record comments indicate that a worker approved the Appellant for an ABAWD exemption and SNAP benefits were issued to the Appellant for the month of February 2019. The Appellant indicated that she assumed that she continued to be exempt from ABAWD after she submitted verification of her participation in a drug treatment program.

The Respondent stated that the Appellant was ineligible for an ABAWD exemption because the written statement from the drug treatment program failed to include that the Appellant was unable to work, as required by policy. As a result, the Appellant's SNAP benefits were approved in error for the month of February 2019. The Respondent testified that the Appellant was scheduled for an ABAWD appointment on March 20, 2019, but because the Appellant failed to attend the scheduled appointment, it was unknown whether the Appellant may have met or may have qualified for an exemption for her participation in a drug treatment program. The Appellant argued that she did not receive the Respondent's March 20, 2019 appointment letter because she was homeless. During the hearing, the Appellant testified that she "still is currently" homeless, but that she uses a friend's address for mailing purposes. However, the Respondent met its duty to notify the Appellant of the scheduled appointment by mailing to her reported address.

The Respondent's February 22, 2019 case record comments reflect that a "15 percent ABAWD homeless exemption has been granted for the month of Mar19." The Respondent testified that the Appellant was given an exemption from ABAWD work requirements for the month of March 2019, because she was homeless. However, policy indicates that being chronically homeless, by itself, is not an exemption for the ABAWD time limits, but may be a result of a potential mental or physical condition which renders the individual unfit for employment. Policy also requires that if such a determination is made, the worker must enter thorough case comments of why the client is obviously unfit for employment. The Respondent provided no evidence that it evaluated the Appellant for fitness as required by policy and therefore it is unknown if the March 2019 SNAP benefits were approved in error.

Federal regulations mandate that "individuals are not eligible to participate in SNAP as a member of any household if the individual received SNAP benefits for more than three countable months during any three-year period". States may have waivers or offer programs, such as the SNAP FSE&T Program, offered in the State of West Virginia, which enable individuals to participate and re-establish eligibility even though they have exhausted their three months of eligibility. The Appellant may be a candidate for such a program if she would elect to participate.

CONCLUSIONS OF LAW

- 1) Because the Appellant is defined as an ABAWD and received three months of SNAP benefits in a 36-month period, policy requires the Appellant to work or participate in a work program at least 20 hours per week or 80 hours per month or meet an exemption.
- 3) Because the Appellant received three months of countable SNAP benefits without meeting ABAWD requirements or an exemption, the Respondent was correct to terminate the Appellant's SNAP benefits.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to terminate the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

ENTERED this _____ day August 2019.

**Danielle C. Jarrett
State Hearing Officer**