



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
State Capitol Complex  
Building 6, Room 817-B  
Charleston, West Virginia 25305  
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Bill J. Crouch  
Cabinet Secretary

Jolynn Marra  
Interim Inspector General

May 12, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 20-BOR-1411

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 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,

Angela D. Signore  
State Hearing Officer  
Member, State Board of Review

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

cc: Sarah McCallister, WVDHHR, [REDACTED] County

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

██████████,

**Appellant,**

**v.**

**Action Number: 20-BOR-1411**

**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 (WV) Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on April 22, 2020, on an appeal filed March 18, 2020.

The matter before the Hearing Officer arises from the March 13, 2020 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 Sarah McCallister, Economic Service Worker. The Appellant was present and was represented by ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 WV DHHR Issuance Limited County (ILC) Notice, dated November 19, 2019
- D-2 WV DHHR Notice of ABAWD 36-Month Tracking, dated February 24, 2020
- D-3 WV DHHR Notice of ABAWD Decision, dated March 13, 2020; WV DHHR Fair Hearing Request Form, dated March 2020, and West Virginia Income Maintenance Manual (WVIMM) §§ 3.2.1.D.2 – 3.2.1.E.1

**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) On January 1, 2020, [REDACTED] County, West Virginia, implemented an issuance-limited county (ILC) policy for SNAP benefits under the ABAWD policy.
- 3) The Appellant meets the definition of ABAWD as defined by policy.
- 4) As an ABAWD, the Appellant was required to work 20 hours per week/80 hours per month, participate in a work program, participate in a SNAP Employment and Training (E&T) program, or meet an exemption, in order to receive SNAP benefits for a time period greater than three months.
- 5) On November 19, 2019, the Respondent issued a notice to the Appellant informing him of the ABAWD policy effective January 01, 2020. (Exhibit D-1)
- 6) On February 24, 2020, the Respondent issued a notice to the Appellant informing him that he was affected by the ABAWD policy with a 36-month eligibility tracking period from January 2019 to December 2021. (Exhibit D-2)
- 7) The Appellant received SNAP benefits for the months of January, February, and March 2020, without meeting work requirements or an exemption as required under ABAWD policy.
- 8) On March 13, 2020, the Respondent sent notice to the Appellant that because he received SNAP benefits for three full months without meeting the ABAWD work requirement or an exemption, his SNAP benefits would be terminated beginning April 1, 2020. (Exhibit D-3)
- 9) The Appellant did not work at least 20 hours per week/80 hours per month or participate in a work program during receipt of SNAP benefits for a three-month period.
- 10) The Appellant did not meet an exemption for the ABAWD work requirement.
- 11) Based on an outbreak of COVID-19, the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) issued a notice on March 20, 2020, implementing a temporary suspension of ABAWD work requirements. This suspension applies during the period of April 1, 2020, through the end of the month subsequent to the month in which the public health emergency declaration by the Secretary of Health and Human Services is lifted.

## **APPLICABLE POLICY**

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

Able-Bodied Adults Without Dependents (ABAWD) is a population of individuals who are age 18 or older, but not yet age 50.

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 months of SNAP benefits received without meeting the ABAWD work requirements or being exempt.

### **WVIMM § 3.2.1.D.2 provides, in part:**

For SNAP Assistance Groups (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 or an exemption

### **WVIMM § 3.2.1.D.3 provides, in part:**

To be eligible, an ABAWD must meet ABAWD work requirements. Unless exempt, he is ineligible once he has received SNAP benefits for three months without being exempt or meeting the ABAWD work requirement. The ABAWD work requirement is met by either working or participating in a work program at least 20 hours per week or 80 hours a month.

### **WVIMM § 3.2.1.D.4 provides, in part:**

An individual is exempt from the ABAWD work requirement if he is certified as physically or mentally unfit for employment according to the provisions in Section 13.15

### **WVIMM § 13.15.1 provides, in part:**

Disabled means an individual is unfit to engage in full-time employment due to a physical and/or mental disability.

### **WVIMM § 13.15.2 provides, in part:**

To establish disability, the disabled individual must be receiving benefits from one of several allowable disability assistance programs.

**WVIMM § 13.15.3 provides, in part:**

For ABAWD individuals:

Individuals who meet the definition of disability due to receipt of assistance from an allowable disability assistance program are not required to provide additional verification of disability. To establish unfitness for employment in individuals who are not receiving assistance from an allowable disability assistance program and whose unfitness for employment is not obvious to the worker, the client must provide written verification from a licensed medical professional that the client is unfit for employment.

**United States Department of Agriculture Policy Memo - Supplemental Nutrition Assistance Program (SNAP) – Families First Coronavirus Response Act and Impact on Time Limit for Able-Bodied Adults Without Dependents (ABAWDs) provides, in part:**

The Families First Coronavirus Response Act suspends the time limit for ABAWDs, except in certain circumstances. If a State offers an ABAWD a slot in a work or workfare program, including a SNAP Employment and Training (E&T) program under section 6(d)(4), the individual is still subject to the time limit. ABAWDs who are not meeting the ABAWD work requirement by working, and who are not offered qualifying work opportunities by the State agency, must not be disqualified based on ABAWD requirements established in section 6(o) of the FNA.

**DISCUSSION**

On November 19, 2019, the Respondent issued a notice to the Appellant informing him that on January 1, 2020, [REDACTED] County, West Virginia, would implement an issuance-limited county (ILC) policy for SNAP benefits under the ABAWD policy. An issuance limited county is a county with enforced specified time limits for the ABAWD population to be eligible for 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 which preclude the individual from working, 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.

On February 24, 2020, the Respondent issued a notice advising the Appellant that his ABAWD 36-month eligibility tracking period began January 2019 and extended through December 2021. (It is unclear why the 36-month period began in January 2019, when the policy was not implemented until January 2020.) The notice included a disclosure of ABAWD requirements and exemptions for continued SNAP benefits. On March 13, 2020, the Respondent issued a second notice to the Appellant advising that because he received SNAP benefits for a full three (3) months (January, February, and March 2020) without meeting the ABAWD work requirement or an exemption, his SNAP benefits would terminate effective, April 1, 2020.

The Respondent had to prove by a preponderance of evidence that the Appellant received three (3) full months of SNAP benefits without complying with the ABAWD work requirement or meeting an exemption. The Appellant's Representative did not contest he received three months of SNAP benefits from January through March 2020, but argued he should be exempted from the requirement due to a lack of transportation. The Appellant's Representative testified that because the Appellant has a learning disability, he has been unable to pass the written driver's examination required to obtain a driver's license. He indicated that the Appellant has tried on multiple occasions but has difficulty recalling the information when tested. The Appellant's Representative added that because they lived in a rural area, without transportation, he reasoned, the Appellant could not attend any work program or be employed. The Appellant's Representative further testified that due to his own disability and moral beliefs, transportation assistance cannot be provided to the Appellant. While the Appellant's Representative averred to a learning disability, there was no indication that the learning disability resulted in an inability to work, only that it created difficulty in obtaining transportation. While policy does permit exemptions due to disability, there is no exemption for obstacles in finding transportation.

On March 20, 2020, based on an outbreak of COVID-19, the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) issued a notice implementing a temporary suspension of ABAWD work requirements. This suspension applies during the period of April 1, 2020, through the end of the month subsequent to the month in which the public health emergency declaration by the Secretary of Health and Human Services is lifted.

Because the Appellant is defined as an ABAWD, received three (3) full months of SNAP benefits, and failed to comply with the ABAWD work requirement or meet an exemption, the Respondent acted correctly when enforcing the ABAWD work penalty. However, due to the recently enacted Families First Coronavirus Response Act, a temporary and partial suspension was enacted regarding the time limits for ABAWD.

### **CONCLUSIONS OF LAW**

- 1) Because the Appellant is defined as an ABAWD he is limited to three (3) 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/80 hours per month or meet an exemption for continued eligibility.
- 2) Because the Appellant received three (3) full months of countable SNAP benefits without meeting ABAWD requirements or an exemption, he is subject to an ABAWD work penalty.
- 3) Because the USDA FNS implemented a temporary suspension of the ABAWD work requirement, effective April 1, 2020, a work requirement penalty cannot be implemented until the month following the month the emergency declaration is lifted.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the decision of the Respondent to terminate the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits until the month following the month the COVID-19 emergency declaration is lifted in accordance with policy and any benefits withheld from the Defendant as a result of the ABAWD penalty shall be restored, retroactive to April 1, 2020.

**ENTERED this \_\_\_\_\_ day of May, 2020.**

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Angela D. Signore  
**State Hearing Officer**