



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

Bill J. Crouch
Cabinet Secretary

**BOARD OF REVIEW
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 558-2278 Fax: (304) 558-1992**

Jolynn Marra
Interim Inspector General

September 17, 2020



RE: [REDACTED] v. WVDHHR
ACTION NO.: 20-BOR-1916

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 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. 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,

Angela D. Signore
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: Tina Marcum, [REDACTED] County DHHR

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

██████████,

Appellant,

v.

ACTION NO.: 20-BOR-1916

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on August 27, 2020, on an appeal filed July 22, 2020.

The matter before the Hearing Officer arises from the July 8, 2020 determination by the Respondent to deny replacement Supplement Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Tina Marcum, Economic Service Worker, DHHR. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Summary, dated August 19, 2020
- D-2 DHHR DFA-SNAP-36, Request for Replacement/Supplement of Food
 Purchased with SNAP Benefits, dated June 22, 2020
- D-3 DHHR Form DFA-SNAP-36, Verification Checklist, dated June 23, 2020
- D-4 DHHR Notice of Eligibility, dated July 08, 2020; and DHHR Fair Hearing
 Request Form, blank
- D-5 West Virginia Income Maintenance Manual (WVIMM) § 12.2.1.A.1
- D-6 DHHR Fair Hearing Request Form, dated July 22, 2020

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) The Appellant is a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits.
- 2) On June 09, 2020, the Appellant contacted the Department to report the loss of food resulting from a power outage from June 06, 2020 through June 08, 2020.
- 3) On June 16, 2020, the Appellant signed the Request for Replacement/Supplement of Food Purchased with SNAP Benefits form, requesting a replacement of \$513.00 of SNAP benefits due to the reported power outage. (Exhibit D-2)
- 4) The Appellant was required to submit her signed Replacement Request form to the Department within ten (10) days of the report of the loss, establishing a due date of June 19, 2020.
- 5) On Friday, June 19, 2020, W.Va. State offices were closed in observance of West Virginia Day.
- 6) The [REDACTED] County DHHR received the Appellant's signed Request for Replacement/Supplement of Food Purchased with SNAP Benefits form via USPS (United States Postal Service) on Monday, June 22, 2020. (Exhibit D-2)
- 7) On July 08, 2020, the Department issued a noticed advising the Appellant that her request for replacement of SNAP benefits was denied due to failure to notify the Department within the ten (10) day timeframe as established by policy. (Exhibit D-4)

APPLICABLE POLICY

Code of Federal Regulations 7 CFR § 274.6 Claims Against Households provides, in part:

Prior to issuing a replacement, the State agency shall obtain from a member of the household a signed statement attesting to the household's loss. The required statement may be mailed to the State agency if the household member is unable to come into the office because of age, handicap or distance from the office and is unable to appoint an authorized representative.

If the signed statement or affidavit is not received by the State agency within 10 days of the date of report, no replacement shall be made. If the 10th day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, the State agency shall consider the statement timely received.

West Virginia Income Maintenance Manual (WVIMM) § 1.5.20 Personal Responsibility Contract provides in part:

In cases when food purchased with SNAP is destroyed in a household misfortune or disaster, the AG will be eligible for replacement of the actual value of the loss, not to exceed one month's allotment, if:

- The loss is reported within 10 days of the incident; and
- The AG's misfortune or disaster is verified; and
- The DFA-SNAP-36 is completed and signed within 10 days of the report of the loss.

A misfortune or disaster such as, but not limited to, fire or the loss of power, may affect an individual household. The power outage must exceed four hours. A natural disaster may affect either an individual household or more than one household.

DISCUSSION

On July 08, 2020, the Respondent issued a notice advising the Appellant that her Request for Replacement/Supplement of Food Purchased with SNAP Benefits form was denied due to the Appellant's failure to report the loss within the ten (10) day timeframe as established by policy. However, at the time of the hearing, the Department alluded to the Appellant's failure to return the signed DFA-SNAP-36 Replacement/Supplement of Food Purchased with SNAP Benefits form as justification for the denial.

The Respondent bears the burden of proof to establish that action taken against the Appellant was in accordance with policy. The Respondent had to prove by a preponderance of evidence that the Appellant's Request for Replacement/Supplement of Food Purchased with SNAP Benefits form was correctly denied.

Pursuant to policy, when food purchased with SNAP benefits is destroyed in a household misfortune or disaster, the assistance group may be eligible for a replacement if: 1) The loss is reported within ten (10) days of the incident, 2) The assistance group (AG) misfortune or disaster is verified; and 3) The DFA-SNAP-36 is completed and signed within ten (10) days of the report of the loss.

The Appellant testified that on June 09, 2020, she contacted the [REDACTED] County DHHR to report a power outage in her area and to request a Replacement/Supplement of Food Purchased with SNAP Benefits form. The Appellant stated that due to the Covid-19 pandemic, she was under the

assumption that she could not go in person to the [REDACTED] County office, and instead, waited for the form to arrive via USPS. The Appellant further testified that she completed the SNAP replacement form the day it was received in the mail, June 16, 2020, and immediately mailed it back to the [REDACTED] County DHHR. The Department Representative testified that according to the date stamped on the form, the Department received the Appellant's request on June 22, 2020. The Department Representative stated that it is procedure for the Department to date stamp all documents and scan them on the day they are received.

When the Appellant reported the loss on June 09, 2020, a due date of Friday, June 19, 2020, was established. Pursuant to policy, if a signed statement or affidavit is not received by the State agency within ten (10) days of the date of report, no replacement shall be made. However, because W.Va. State offices were closed in observance of West Virginia Day on Friday, June 19, 2020, and because offices were also closed on Saturday and Sunday, June 20 and 21, 2020, all documents received the first business day after holidays and weekends shall be consider as timely pursuant to Federal Regulations.

CONCLUSIONS OF LAW

- 1) Pursuant to Federal Regulations, because W.Va. State offices were closed in observance of West Virginia day on Friday, June 19, 2020, and mail could not be delivered, the Appellant's due date was extended until close of business on Monday, June 22, 2020.
- 2) Because the Appellant's due date was extended until Monday, June 22, 2020, the Department was incorrect to deny the Appellant's replacement SNAP benefits.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant's Request for Replacement/Supplement of Food Purchased with SNAP Benefits.

ENTERED this ____ day of September 2020.

Angela D. Signore
State Hearing Officer