



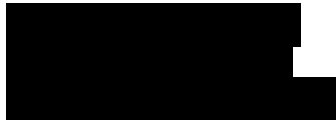
**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL**

**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**

March 18, 2021



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 21-BOR-1138

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. 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: Lisa McCutcheon, [REDACTED] County DHHR

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

[REDACTED],

**Appellant,**

v.

**ACTION NO.: 21-BOR-1138**

**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 [REDACTED]. 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 March 4, 2021, on an appeal filed January 28, 2021.

The matter before the Hearing Officer arises from the January 14, 2021 determination by the Respondent to permanently disqualify the Appellant from participation in the Supplemental Nutrition Assistance Program (SNAP).

At the hearing, the Respondent appeared by Lisa McCutcheon, 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 Notice of Decision, dated January 14, 2021  
D-2 Plea and Sentencing Order from [REDACTED] Circuit Court, dated February 08, 2010

**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 applied for SNAP benefits in January 2021.
- 2) The Appellant was convicted of the felony offense of Involuntary Manslaughter which involved the possession, use or distribution of a controlled substance resulting in a loss of life. (Exhibit D-2)
- 3) On January 14, 2021, the Respondent issued a notice advising the Appellant that he was disqualified from SNAP participation effective January 05, 2021, based on a drug felony violation resulting in the loss of life. (Exhibit D-1)
- 4) On January 28, 2021, the Appellant verbally requested a Fair Hearing to protest the Department's Notice of Decision of disqualification from SNAP benefits.

### **APPLICABLE POLICY**

#### **21 United States Code §802.6 Controlled Substance Act provides, in part:**

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

#### **West Virginia Income Maintenance Manual (WVIMM) §1.4.17.C.2 Who Is Not Categorically Eligible? provides, in part:**

A person who is normally required to be a member of the AG is disqualified due to being convicted of a specific felony offense. The felony must meet two criteria:

The felony must involve an element of the possession, use, or distribution of a controlled substance as defined by Section 802 (6) of the Controlled Substance Act; and:

The offense of conviction has at least one of the following elements:

- Misuse of SNAP benefits
- Loss of Life
- Causing of physical injury

**WVIMM § 3.2.1.B.3 Individuals Excluded by Law provides, in part:**

Convicted of a Felony Offense That Occurred After 8/22/96 Involving a Controlled Substance:

The offense involved one of the following elements due to the possession, use or distribution of a controlled substance as defined by Section 802 (6) of the Controlled Substance Act:

- Misuse of SNAP benefits
- Loss of Life
- Causing of physical injury

...Period of ineligibility: Permanent exclusion

**DISCUSSION**

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 disqualification from SNAP benefits was correctly established.

Pursuant to policy, individuals convicted of a felony offense which occurred after August 22, 1996, and involved an element of the possession, use, or distribution of a controlled substance as defined by Section 802.6 of the Controlled Substance Act and led to a loss of life are permanently disqualified from receiving SNAP benefits.

The Appellant applied for SNAP benefits for a one-person Assistance Group (AG) in January 2021. On January 14, 2021, the Respondent issued a notice advising the Appellant that he was disqualified from SNAP participation effective January 05, 2021, based on a drug felony violation resulting in the loss of life. The Appellant argued that because he did not willingly provide the narcotic that resulted in the cause of death, he should not be permanently disqualified from SNAP participation.

By the Appellant's own admission during the hearing, he was convicted of felony manslaughter which was related to his involvement in the possession, use, or distribution of a controlled substance which meets the policy requirement of permanent exclusion from the receipt of SNAP benefits. Although the Appellant's circumstances are unfortunate, policy is clear in that it does not provide Supplemental Nutrition Assistance Benefits to individuals convicted of a drug related felony resulting in the loss of life.

### **CONCLUSIONS OF LAW**

- 1) Individuals convicted of a felony offense that occurred after August 22, 1996, involving a controlled substance that resulted in a loss of life are permanently disqualified from Supplemental Nutrition Assistance Program (SNAP) eligibility.
- 2) Because the Appellant was convicted of a felony offense involving a controlled substance resulting in a loss of life, the Appellant is permanently disqualified from SNAP eligibility.

### **DECISION**

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

ENTERED this \_\_\_\_ day of March 2021.

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**Angela D. Signore**  
State Hearing Officer