



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

**Bill J. Crouch  
Cabinet Secretary**

**BOARD OF REVIEW  
Berkeley County DHHR  
PO Box 1247  
Martinsburg, WV 25402**

**Jolynn Marra  
Interim Inspector General**

July 15, 2021

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 21-BOR-1647

Dear [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,

Lori Woodward, J.D.  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Peter VanKleeck, BCF, [REDACTED] Co. DHHR

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

██████████,

**Appellant,**

v.

**ACTION NO: 21-BOR-1647**

**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 June 24, 2021, on an appeal filed May 26, 2021.

The matter before the Hearing Officer arises from the April 27, 2021, decision by the Respondent to expunge the Appellant's Pandemic Electronic Benefits Transfer (P-EBT) account for 365 days of non-use of benefits.

At the hearing, the Respondent appeared by Peter VanKleeck, Family Support Supervisor. The Appellant appeared *pro se*. The witnesses were sworn, and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 WV Department of Education and WV Department of Health and Human Resources Receive Approval for P-EBT Program to Help WV Families in Need press release of May 4, 2020
- D-3 Sample Notice (CNEB) of potential P-EBT eligibility dated May 12, 2020
- D-4 ebtEDGE Agency case information and current benefits screen print
- D-5 ebtEDGE Agency case expungement screen print
- D-6 ebtEDGE case transaction screen print
- D-7 Notice (BII5) of non-use of SNAP EBT account for 335 days dated April 27, 2021
- D-8 Notice (BII6) of expungement dated May 27, 2021
- D-9 West Virginia Income Maintenance Manual (WV IMM), Chapter 10, §10.3.3

**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) In accordance with the Families First Coronavirus Response Act (FFCVRA), the WV Department of Education (WVDE) and the WV Department of Health and Human Resources (DHHR) in a joint effort began issuing Pandemic Electronic Benefit Transfer (P-EBT) benefits intended for school-age students who qualify for free or reduced-price school lunches when school was out of session due to the declared COVID-19 crisis. (Exhibit D-2)
- 2) The WVDE and DHHR issued a press release (PR) on May 4, 2020 (hereinafter referred to as "Press Release"), informing the public about the availability of the P-EBT program for families with school children who qualify for free or reduced-price school meals when school is out of session due to the pandemic. This PR included a DHHR contact phone number and website for additional information. (Exhibit D-2)
- 3) The DHHR sent notification in May 2020 to WV households who were potentially eligible for the P-EBT benefits, which the Appellant received. This notification included a DHHR contact telephone number. (Exhibit D-3)
- 4) The Appellant did not make an application for P-EBT benefits.
- 5) The Appellant was not a SNAP benefit recipient at the time of the P-EBT issuance but had been in the past.
- 6) On April 27, 2021, the Respondent sent the Appellant notification of SNAP EBT account non-use for 335 days, explaining that if the benefits were not used within 365 days from the date the benefit is deposited into the account, it would be removed. (Exhibit D-7)
- 7) The Appellant did not withdraw any amounts from her EBT account prior to the expiration of 365 days of non-use.
- 8) The P-EBT benefit amounts of \$125.40 and \$68.40 were deposited on May 22, 2020, on the Appellant's previous EBT card, and expunged on May 25, 2021. (Exhibits D-4 and D-5)
- 9) On May 27, 2021, the Respondent sent the Appellant notification that all of the SNAP benefits in her EBT account which had not been used for 365 days were removed. (Exhibit D-8)

## **APPLICABLE POLICY**

West Virginia Income Maintenance Manual (IMM), Chapter 10, §10.3.3.B, *Dormant – 335 Days of Non-Use*, states that a notice will be sent to the client advising they have not used benefits from the account during the past 335 days ... a transaction must be made to prevent removal of that benefit.

IMM, Chapter 10, §10.3.3.C, *Expungement – 365 Days of Non-Use*, states that a notice will be sent to the client advising the benefits have been expunged and are no longer available. The notice will also advise they may have other grant months remaining and must contact a worker to have the account reset in order to access those benefits.

IMM, Chapter 9, 9.1, explains that an applicant must be notified in writing of the action taken on his application, and the client must be notified in writing, and usually in advance, of any action resulting in a change in benefits. Adverse actions, other than those specified in Section 9 require an advance notice period before any action is effective.

## **DISCUSSION**

In response to the FFCVRA, the WVDE and DHHR jointly administered the implementation of P-EBT benefits for families with school children who qualify for free or reduced-price school meals when school was out of session due to the declared COVID-19 crisis. This program was also made available for parents and guardians who care for school-age students who do not receive free or reduced-price school meals upon application and determination of eligibility. The WVDE and DHHR issued a press release on May 4, 2020, explaining the program. The Press Release explained that the P-EBT benefits would be issued in two waves. The first wave would be issued to those students who receive Supplemental Nutrition Assistance Program (SNAP) benefits, West Virginia WORKS (WV WORKS), or Medicaid through the DHHR. A telephone number was given to contact the DHHR if a parent or guardian no longer had their SNAP EBT card. The second wave would be issued to those students who do not receive SNAP, WV WORKS, or Medicaid but are eligible for free or reduced-price school meals and were not included in the first wave. County school nutrition offices were to work directly with families to educate them about the use of the P-EBT card. A website address was included in the PR release for additional information.

On May 21, 2020, households who were potentially eligible for the P-EBT benefits were notified through the DHHR by letter, which included a contact phone number. The Appellant testified that she did remember receiving this letter but took no further action regarding the P-EBT program until she received notification of non-use of benefits in April 2021. On April 27, 2021, the DHHR notified the Appellant of non-use of benefits for 335 days. This notice explained that the Appellant must use the EBT benefits or else they will be removed after 365 days of non-use. On May 27, 2021, the DHHR sent notification of the removal of the benefits which were not used after 365 days. The Appellant brings this appeal contending that the DHHR should have notified her that she had available P-EBT funds. The Appellant contends that the Respondent failed to abide by policy in not notifying her of the available P-EBT funds.

No policy was found or presented that specifically applies to notice requirements regarding these emergency FFCVRA benefits. These benefits created in response to the COVID-19 crisis are unique in that two separate agencies, WVDE and the DHHR, were involved in its implementation. The WVDE identified and determined eligibility for the P-EBT program. P-EBT benefits were then loaded through the DHHR EBT system.

DHHR policy is clear that notification of any actions taken on an application must be made; however, there was no application in this case. The Appellant was not receiving any SNAP benefits at the time the P-EBT benefits were issued. Thus, there was no change in benefits. The Appellant was given notification of potential eligibility for the P-EBT program in May 2020 but took no further action regarding these benefits until April 30, 2021, when she attempted to contact her local DHHR. The Appellant testified that she did not receive a call back from the worker. It does not appear that the Appellant attempted to contact the DHHR again until May 25, 2021, when she spoke to Peter VanKleeck who assisted the Appellant with getting a new EBT card issued. Although the Appellant's benefits which had not been used prior to the expiration of 365 days were expunged, the remaining P-EBT benefits were able to be accessed prior to expungement.

Per DHHR policy, the Appellant was notified regarding non-use of the EBT benefits on her card after 335 days and then again regarding the 365 day expungement. The policy-required notification prior to the adverse action being taken was issued to the Appellant. The Respondent's decision to expunge the Appellant's P-EBT benefits is affirmed.

### **CONCLUSION OF LAW**

Whereas the Appellant failed to access her P-EBT account before the expiration of 365 days, the Respondent correctly expunged the non-used benefits.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to expunge the Appellant's 365 days unused P-EBT benefits.

**ENTERED this 15<sup>th</sup> day of July 2021.**

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Lori Woodward, Certified State Hearing Officer