



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
P.O. Box 1736
Romney, WV 26757
304-822-6900**

**Jolynn Marra
Interim Inspector General**

January 5, 2022

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-2450

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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: Angie Smith, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 21-BOR-2450

**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 December 20, 2021, on an appeal filed April 27, 2021. The Appellant verbally requested a fair hearing on April 27, 2021; however, due to an agency error the request was not submitted to the Board of Review until December 3, 2021.

The matter before the Hearing Officer arises from the April 2, 2021, decision by the Respondent to terminate Supplemental Nutrition Assistance Program benefits.

At the hearing, the Respondent appeared by Angie Smith, Economic Service Supervisor. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Case Comments
- D-2 Computer printout of West Virginia State Police Sex Offender Registry
- D-3 West Virginia Income Maintenance Manual §3.2.1. B.3
- D-4 Division of Family Assistance Policy Clarification-Substantial Lottery and Gaming Winnings Certain Convictions and Non-Compliance of Sentence

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 is a registered sex offender from a January 4, 2017 conviction of third-degree sexual assault and was sentenced to five (5) years supervised probation and fifty (50) years extended supervision. (Exhibit D-2)
- 3) The Appellant had two separate parole violations for methamphetamine charges in which he served sixty (60) and one-hundred and twenty (120) days at the [REDACTED] Regional Jail.
- 4) On April 1, 2021, the Appellant completed a recertification for SNAP benefits and self-attested his multiple parole violations. Exhibit D-1 documents in part, “client is drug/fleeing parole violators [sic] in home. He was in jail for sexual assault and parole violations on 05/1982019 [sic] at [REDACTED] Regional Jail.”
- 5) The Respondent issued a Notice of Denial on April 2, 2021, informing the Appellant of his disqualification from receiving SNAP benefits due to “parole/probation/terms of sentence”.

APPLICABLE POLICY

West Virginia Income Maintenance Manual § 3.2.1.B.3 documents in pertinent part ***Individuals Excluded by Law for SNAP*** include:

- Receipt of Simultaneous Multiple Benefits
- A Fleeing Felon
- A Violator of Probation or Parole

The individual is considered to be a violator of probation or parole only if both of the following circumstances apply:

-Another agency or court determines that the individual violated a condition of his probation or parole imposed under federal or State law.

-Federal, state, or local Law enforcement authorities are actively seeking the individual to enforce the conditions of the probation or parole. In order for the law enforcement authorities to be considered

actively seeking the individual to enforce the conditions of the probation or parole, one of the following three criteria must be met:

1. A federal, state, or local law enforcement agency submits a request for information from the Department of Health and Human [sic] (DHHR) and informs the DHHR that it intends to arrest an individual for a probation or parole violation within 20 days of the date that the law enforcement agency submitted its request.
2. A federal, state, or local law enforcement agency presents a felony arrest warrant that conforms to one of the following National Crime Information Center Uniform Offense Classification Codes to obtain information of the client: Escape, Flight to Avoid (prosecution, confinement, etc.) and Flight-Escape.
3. The DHHR requests information regarding whether or not an individual is a probation or parole violator from a federal, State, or local law enforcement agency, and that agency states that it intends to arrest the individual for a probation or parole violation within 30 days of the date that the DHHR requested the information.

Period of ineligibility: Ineligible while identified in this category

- Convicted After 9/22/96 of Trafficking in SNAP Benefits Involving \$500.00 or more
- Convicted of a Felony Offense that Occurred After 8/22/96 Involving a Controlled Substance
- Conviction of Certain Felonies when Individuals are out of compliance with terms of their sentence for conduct occurring after February 7, 2014

Effective June 14, 2019, individuals who are convicted of any of the following offenses and ***are not in compliance*** with the terms of their sentence are ineligible for SNAP

1. Section 2241 of Title 18, United States Code-Aggravated Sexual Abuse
2. Section 1111 of Title 18, United States Code-Murder
3. Chapter 110 of Title 18, United States Code-Sexual Exploitation, and other abuse of children
4. Section 40002(a) the Violence Against Women Act of 1994
5. Any offense under State law determined by the Attorney General to be substantially similar to an offense listed above.

Period of ineligibility: ***Ineligible while identified in this category.***

Individuals are required to self-attest at application and redetermination whether they or any other member of their household have been convicted of such crimes

are complying with the terms of their sentence. This self-attestation can be made in writing, verbally, or both.

United States Department of Agriculture Food and Nutrition Services Agricultural Act of 2014, Public Law 113-79 documents in pertinent part:

SEC. 4008. ELIGIBILITY DISQUALIFICATIONS FOR CERTAIN CONVICTED FELONS. (a) IN GENERAL.—Section 6 of the Food and Nutrition Act of 2008 (7 U.S.C. 2015) is amended by adding at the end the following: “(r) DISQUALIFICATION FOR CERTAIN CONVICTED FELONS.— “(1) IN GENERAL.—An individual shall not be eligible for benefits under this Act if— “(A) the individual is convicted of— “(i) aggravated sexual abuse under section 2241 of title 18, United States Code; “(ii) murder under section 1111 of title 18, United States Code; “(iii) an offense under chapter 110 of title 18, United States Code; “(iv) a Federal or State offense involving sexual assault, as defined in 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or “(v) an offense under State law determined by the Attorney General to be substantially similar to an offense described in clause (i), (ii), or (iii); and “(B) the individual is not in compliance with the terms of the sentence of the individual or the restrictions under subsection(k)

DISCUSSION

Policy which governs the Supplemental Nutrition Assistance Program (SNAP) excludes individuals from receiving benefits who have been convicted of certain felonies and are not in compliance with the terms of their sentence. Those felony convictions include, but are not limited to, aggravated sexual abuse and sexual exploitation of children. The Appellant has appealed the Respondent’s decision to terminate his SNAP benefits due to his felony conviction of third-degree sexual assault. The Respondent must show by a preponderance of evidence that the Appellant was to be excluded by law from receiving SNAP benefits based on his felony conviction and for noncompliance with the sentencing terms associated with such conviction.

On April 1, 2021, the Appellant completed a recertification for SNAP benefits and self-attested a 2017 sexual assault conviction and two corresponding drug-related probation violations. Angie Smith, Economic Service Supervisor, indicated that the Respondent had no previous knowledge of the Appellant’s 2017 felony conviction and confirmed the offense through the [REDACTED] State Police Sex Offender Registry. Evidence revealed the Appellant was convicted of third-degree sexual assault and sentenced to five years supervised probation and 50 years of extended supervision (Exhibit D-2). Based on the self-attested report of the conviction, the Respondent terminated the Appellant’s SNAP benefits effective May 1, 2021. The Appellant related confusion with the termination of SNAP benefits indicating that he was aware of others with similar convictions who still received SNAP benefits. The Appellant indicated that he currently complies with his probation officer and acknowledged he was incarcerated for sixty (60) days and one hundred (120) and twenty days for the drug related probation violations. Ms. Smith testified that the Appellant’s ineligibility for benefits was based on the sexual assault conviction and that the drug related offenses were not considered when determining his SNAP eligibility. Ms. Smith cited

a 2019 West Virginia Income Maintenance Manual Policy Change (Exhibit D-4) to support the Respondent's position that the sexual assault conviction excluded the Appellant from receiving SNAP benefits.

Governing policy and public law are clear that individuals are disqualified from receiving SNAP benefits when they have a felonious conviction of sexual assault and are determined to be in non-compliance with the terms associated with their sentence. The Appellant's 2017 sexual assault conviction alone does not prohibit his receipt of SNAP benefits. While the Appellant violated the terms of his probation in May 2019 for multiple drug-related offenses, he served two separate periods of incarceration to remedy the violations. There was no evidence presented which supports that the Appellant was considered non-compliant with the terms of his initial sentence when he self-attested his felony conviction and previous probation violations to the Respondent.

Because the Appellant is compliant with the sentencing terms of his 2017 felony conviction and not fleeing prosecution for any related violation to the established sentence, the Respondent's action to terminate SNAP benefits at the time of recertification cannot be affirmed.

CONCLUSIONS OF LAW

- 1) An individual is disqualified from receipt of SNAP benefits when they have certain felony convictions and demonstrate noncompliance with terms associated with their sentencing.
- 2) The preponderance of evidence failed to verify that the Appellant was non-compliant with the terms of his 2017 sentence and should not have been disqualified from receipt of SNAP benefits solely on his sexual assault conviction.
- 3) The Respondent incorrectly terminated the Appellant's SNAP benefits.

DECISION

It is the decision of the State Hearing officer to **REVERSE** the Respondent's decision to terminate the Appellant's Supplemental Nutrition Assistance Program benefits after April 30, 2021. It is hereby **ORDERED** that the Appellant's SNAP benefits be reinstated and made retroactive to the date of termination.

ENTERED this ____ day of January 2022.

Eric L. Phillips
State Hearing Officer