



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review

Jeffery H. Coben, MD
Interim Cabinet Secretary

Sheila Lee
Interim Inspector General

February 24, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1861

AMENDED DECISION

Dear [REDACTED]:

Enclosed is a copy of an *amended decision* resulting from the hearing held in the above-referenced matter on August 3, 2022.

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: Recourse to Hearing Decision
Form IG-BR-29

cc: Tera Pendleton, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 22-BOR-1861

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

AMENDED DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the amended 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 August 3, 2022, on appeal filed July 12, 2022. The matter before the Hearing Officer arises from the July 7, 2022 decision by the Respondent to deny an emergency allotment of Supplemental Nutrition Assistance Program (SNAP) benefits under the Family First Corona Virus Response Act (FFCVRA).

At the hearing, the Respondent appeared by Tera Pendleton, Health and Human Services Specialist. The Appellant appeared *pro-se*. All witnesses were sworn and the following documents were admitted into evidence.

As a result of additional information obtained through the United States Department of Agriculture-Food and Nutrition Services, this amended decision vacates the previously issued decision by the State Hearing Officer of August 4, 2022.

Department's Exhibits:

- D-1 Computer Printout of case comments
- D-2 SNAP CSLR Recertification dated July 5, 2022
- D-3 Notice of Decision dated July 7, 2022
- D-4 West Virginia Income Maintenance Manual § 1.4.18.E.2

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) At the time of the hearing, the Appellant and his household were recipients of SNAP benefits.
- 2) The Appellant was required to complete a recertification of SNAP benefits for the household, prior to June 30, 2022.
- 3) On May 16, 2022, the Respondent issued a SNAP CSLR Recertification notice (Exhibit D-2) which advised the household of the recertification requirement. The document was to be completed and returned to the Respondent by June 1, 2022.
- 4) As part of the recertification process, the Appellant was required to complete a telephonic interview on June 9, 2022. (Exhibit D-2)
- 5) The household did not return the SNAP CSLR Recertification form by June 30, 2022. (Exhibit D-1)
- 6) The household failed to appear for the scheduled telephonic interview. (Exhibit D-1)
- 7) On July 5, 2022, the Appellant returned the SNAP CSLR Recertification form and completed the required recertification interview on the same date. (Exhibit D-1)
- 8) On July 7, 2022, the Respondent issued notice to the household advising of the approval of prorated SNAP benefits in the amount of \$103.00 beginning July 5, 2022.
- 9) The Respondent did not issue an emergency allotment of SNAP benefits to the Appellant through the FFCVRA.

APPLICABLE POLICY

Code of Federal Regulations 7 CFR 273.12(a)(5) Notification of simplified reporting requirement.

At the initial certification, recertification and when the State agency transfers the households to simplified reporting, the State agency shall provide the household with the following:

...

(iii) Periodic report.

...

(B) Submission of periodic reports by non-exempt households. Households that are certified for longer than 6 months, except those households described in [§ 273.12\(a\)\(5\)\(iii\)\(A\)](#), must file a periodic report between 4 months and 6 months, as required by the State agency. Households in which all adult members are elderly or have a disability with no earned income and are certified for periods lasting between 13 months and 24 months must file a periodic report once a year. In selecting a due date for the periodic report, the State agency must provide itself sufficient time to process reports so that households that have reported changes that will reduce or terminate benefits will receive adequate notice of action on the report in the first month of the new reporting period.

...

(E) If a household fails to file a complete report by the specified filing date, the State agency shall provide the household with a reminder notice advising the household that it has 10 days from the date the State agency mails the notice to file a complete report. If an eligible household files a complete periodic report during this 10-day period, the State agency shall provide it with an opportunity to participate no later than ten days after its normal issuance date. If the household does not respond to the reminder notice, the household's participation shall be terminated and the State agency must send an adequate notice of termination described in [paragraph \(a\)\(5\)\(iii\)\(C\)](#) of this section.

(F) If an eligible household that has been terminated for failure to file a complete report files a complete report after its extended filing date under (E), but before the end of the issuance month, the State agency may choose to reinstate the household. If the household has requested a fair hearing on the basis that a complete periodic report was filed, but the State does not have it, the State agency shall reinstate the household **if a completed periodic report is filed before the end of the issuance month**. [Emphasis added]

West Virginia Income Maintenance Manual § 1.2.2.B documents in pertinent part:

Periodic reviews of total eligibility for recipients are mandated by federal law. These are redeterminations and take place at specific intervals, depending on the program or Medicaid coverage group. Failure by the client to complete a redetermination will result in termination of benefits. If the client completes the redetermination process by the specified program deadline(s) and remains eligible, benefits must be uninterrupted and received at approximately the same time.

West Virginia Income Maintenance Manual § 1.4.18.E documents in pertinent part:

A SNAP redetermination is a reapplication for benefits. Under no circumstances are benefits continued past the month of redetermination, unless a redetermination is

completed, and the client is found eligible. If the recipient is no longer eligible, the SNAP AG is closed.

West Virginia Income Maintenance Manual § 1.4.18.E.2 documents in pertinent part:

In the following redetermination situations, a new application is required. Benefits for the first month of certification and the beginning of the certification period are determined as they are for any other applicant.

- The verification is due within the last month of the certification period and is not returned by the end of the certification period or during the following month; or
- The verification is due after the last day of the certification period and is not returned by the last day of the month it was due, i.e., the month following the end of the certification period.
- The AG does not submit a redetermination before the end of the certification period.

If the CSLE/CSLR is not completed and returned by the end of the certification period, benefits are stopped. Notice of closure is required, but advance notice is not required. If the CSLE/CSLR is returned in the month after the end of the certification period, no DFA-2 or DFA-SNAP-1 is required for reapplication. The CSLE/CSLR is used as the application form and benefits are prorated from the date the application is received in that month.

West Virginia Income Maintenance Manual § 1.4.19.A.1 documents in pertinent part:

A determination of the initial SNAP benefit month must be made to determine if initial benefits must be prorated. Any month determined to be an initial month must have benefits prorated. The amount of the initial allotment is prorated over the remainder of the month from the date of application. The full month's countable income is used to determine the full month's allotment. The amount of the initial benefit due the recipient is based on the number of days left in the approval month from the date of application as compared to the full month's benefit.

Families First Corona Virus Response Act (FFCVRA), Title III, §2301(a)(1) documents in pertinent part:

(a) In the event of a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of coronavirus disease 2019 (COVID-19) and the issuance of an emergency or disaster declaration by a State based on an outbreak of COVID-19, the Secretary of Agriculture--

(1) shall provide, at the request of a State agency (as defined in section 3 of the Food and Nutrition Act of 2008) that provides sufficient data (as determined by the Secretary through guidance) supporting such request, for emergency allotments to households participating in the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 to address temporary food needs not greater than the applicable maximum monthly allotment for the household size.

DISCUSSION

After a review, the State Hearing Officer issues the following amended decision on the matter heard on August 3, 2022. On July 5, 2022, the Appellant reestablished his household's eligibility for SNAP benefits and was issued a prorated portion of SNAP benefits in the amount of \$103.00. The Respondent determined that the Appellant was ineligible to receive an emergency allotment of SNAP benefits through the FFCVRA in July 2022, because the household was not an active recipient of benefits on July 1, 2022. The Appellant appealed the Respondent's decision to deny the emergency allotment of SNAP benefits through the FFCVRA. The Respondent must prove by a preponderance of the evidence that the Appellant was ineligible to receive an emergency allotment of SNAP benefits through the FFCVRA for July 2022.

Federal law requires SNAP recipients to complete a periodic recertification of eligibility. When a recipient fails to complete a recertification of benefits prior to the end of the certification period, a new application is required. The Appellant failed to complete the necessary recertification requirements to maintain eligibility for the SNAP program prior to June 30, 2022, which resulted in the termination of eligibility for the program. The Appellant reestablished his eligibility for the SNAP program on July 5, 2022, and the Respondent approved a prorated portion of benefits to the household in the amount of \$103.00. The Appellant proffered testimony indicated that the delay in adhering to his recertification requirements were a result of multiple changes to his household circumstances and he wanted to ensure the correct information concerning his household was relayed to the Respondent.

The FFCVRA is a temporary regulation during a public health emergency. It allows State agencies, based on approval of the USDA, to distribute emergency allotments of SNAP benefits, not to exceed the maximum monthly allotment for the household size, to participating households to address temporary food needs. The FFCVRA emergency allotment is not issued as a part of regular SNAP benefits. The policy related to the FFCVRA is not found in the Respondent's governing policy manual. However, the Respondent through its own interpretation of the FFCVRA guidelines and their own internal memorandum dated March 30, 2020, determined that SNAP assistance groups must have active SNAP approved prior to the month the emergency allotment is issued.

On May 21, 2021, the United States Department of Agriculture issued a memorandum as guidance to the FFCVRA guidelines. The memorandum identifies that households are eligible to receive a minimum amount of \$95.00 in emergency allotment of benefits through the FFCVRA. The memorandum also identifies that the determination of a household's emergency allotment of SNAP benefits should be based on the total ongoing monthly benefit amount for which the household is eligible, and ***not the prorated amount***. [Emphasis added]

In addition to a base benefit amount, households are eligible for, at minimum, \$95.00 of an emergency

allotment of SNAP benefits through the FFCVRA. Whether or not a household has been issued a prorated benefit for the month has no bearing on a household's eligibility for an emergency allotment issuance of SNAP benefits. Because the Appellant was a recipient of SNAP benefits in the month of July 2022, the household was eligible for an emergency allotment of SNAP benefits through the FFCVRA. Therefore, the Respondent's decision to not issue an emergency allotment of SNAP benefits for the month of July 2022, cannot be affirmed.

CONCLUSIONS OF LAW

- 1) SNAP households are required to complete a redetermination of eligibility at specific intervals. Failure to complete the redetermination results in a termination of benefit.
- 2) The Appellant's household failed to complete a timely redetermination of eligibility and SNAP benefits were terminated effective June 30, 2022.
- 3) In July 2022, the Appellant reestablished his household's eligibility for SNAP as was issued a prorated portion of benefits for the month.
- 4) The FFCVRA establishes that, at minimum, an emergency allotment of SNAP benefits in the amount of \$95.00, be issued regardless of household size.
- 5) Emergency allotments of SNAP benefits shall be based on the total base monthly benefit for which the household is eligible, and not the prorated amount.
- 6) Because the Appellant's household was a SNAP benefit recipient in July 2022, the household was eligible for a minimum emergency supplemental issuance of SNAP benefits through the FFCVRA.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to not issue an emergency allotment of SNAP benefit through the FFCVRA for the month of July 2022. As a requirement of this amended decision, the Respondent must calculate and issue an emergency allotment of SNAP benefits through the FFCVRA, as determined through the base benefit calculated through the Appellant's July 5, 2022 eligibility determination.

ENTERED this ____ day of February 2023.

Eric L. Phillips
State Hearing Officer

