



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

**Sherri A. Young, DO, MBA, FAAFP  
Interim Cabinet Secretary**

**Christopher G. Nelson  
Interim Inspector General**

October 6, 2023

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 23-BOR-2805

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: Recourse to Hearing Decision  
Form IG-BR-29

cc: Julie Williams, BFA, WV DHHR

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

██████████,

**Appellant,**

v.

**ACTION NO.: 23-BOR-2805**

**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 October 3, 2023, on an appeal filed September 6, 2023.

The matter before the Hearing Officer arises from the Respondent's August 28, 2023 decision to close the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits for failure to comply with Able-Bodied Adult Without Dependents (ABAWD) work requirements.

At the hearing, the Respondent appeared by Julie Williams, Economic Services Supervisor. The Appellant appeared *pro se*. The witnesses were placed under oath and the following documents were admitted into evidence:

**Department's Exhibits:**

None

**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) Effective July 1, 2023, all West Virginia SNAP recipients, between the ages of 18 and 52, were required to comply with the ABAWD requirements or provide verification of their exemption to the requirements.
- 2) The Appellant is an ABAWD who must meet work requirements or an exemption to continue receiving SNAP benefits.
- 3) The Appellant was eligible for SNAP assistance for three months in a three-year period without meeting the work requirements or an exemption.
- 4) The Appellant received SNAP benefits for the months of July, August, and September 2023.
- 5) On August 28, 2023, the Respondent sent notification of SNAP closure to the Appellant due to not meeting the ABAWD work requirement or otherwise meeting an exemption, effective September 30, 2023.
- 6) The Appellant submitted a timely fair hearing request (DFA-FH-1) on September 6, 2023, with a statement that he should be exempt from the work requirements because he is the caregiver for his disabled father.
- 7) The Respondent did not send a verification checklist for additional needed information to determine whether the Appellant met the stated exemption from the ABAWD work requirements.
- 8) The Respondent terminated the Appellant's SNAP benefits effective September 30, 2023, while the hearing decision was pending.

## **APPLICABLE POLICY**

### **Able-Bodied Adults Without Dependents (ABAWD) Policy:**

**Code of Federal Regulations, 7 CFR 273.24(b)**, in pertinent part:

(b) **General Rule.** Individuals are not eligible to participate in SNAP as a member of any household if the individual received SNAP benefits for more than three countable months during any three-year period, except that individuals may be eligible for up to three additional countable months in accordance with [paragraph \(e\)](#) of this section.

(1) **Countable months.** Countable months are months during which an individual receives SNAP benefits for the full benefit month while not:

- (i) Exempt under [paragraph \(c\)](#) of this section;
- (ii) Covered by a waiver under [paragraph \(f\)](#) of this section;
- (iii) Fulfilling the work requirement as defined in [paragraph \(a\)\(1\)](#) of this section;

- (iv) Receiving benefits that are prorated in accordance with [§ 273.10](#); or
- (v) In the month of notification from the State agency of a provider determination in accordance with [§ 273.7\(c\)\(18\)\(i\)](#).

...

(3) ***Measuring the three-year period.*** The State agency may measure and track the three-year period as it deems appropriate. The State agency may use either a “fixed” or “rolling” clock. If the State agency chooses to switch tracking methods, it must inform FNS in writing. With respect to a State, the three-year period:

- (i) Shall be measured and tracked consistently so that individuals who are similarly situated are treated the same; and
- (ii) Shall not include any period before the earlier of November 22, 1996, or the date the State notified SNAP recipients of the application of Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ([Pub. L. 104–193](#)).

...

(8) The State agency shall inform all ABAWDs of the ABAWD work requirement and time limit both in writing and orally in accordance with [§ 273.7\(c\)\(1\)\(ii\)](#) and [\(iii\)](#).

(c) ***Exceptions.*** The time limit does not apply to an individual if he or she is:

- (1) Under 18 or 50 years of age or older;
- (2) Determined by the State agency to be medically certified as physically or mentally unfit for employment. An individual is medically certified as physically or mentally unfit for employment if he or she:
  - (i) Is receiving temporary or permanent disability benefits issued by governmental or private sources;
  - (ii) Is obviously mentally or physically unfit for employment as determined by the State agency; or
  - (iii) If the unfitness is not obvious, provides a statement from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist, a social worker, or any other medical personnel the State agency determines appropriate, that he or she is physically or mentally unfit for employment.
- (3) Is a parent (natural, adoptive, or step) of a household member under age 18, even if the household member who is under 18 is not himself eligible for SNAP benefits;
- (4) Is residing in a household where a household member is under age 18, even if the household member who is under 18 is not himself eligible for SNAP benefits;
- (5) Is otherwise exempt from work requirements under section 6(d)(2) of the Food and Nutrition Act of 2008, as implemented in regulations at [§ 273.7\(b\)](#); or
- (6) Is pregnant.

(d) ***Regaining eligibility.***

- (1) An individual denied eligibility under [paragraph \(b\)](#) of this section, or who did not reapply for benefits because he was not meeting the work requirements under [paragraph \(b\)](#) of this section, shall regain eligibility to participate in SNAP if, as determined by the State agency, during any 30 consecutive days, he or she:
  - (i) Worked 80 or more hours;

- (ii) Participated in and complied with the requirements of a work program for 80 or more hours;
- (iii) Any combination of work and participation in a work program for a total of 80 hours; or participated in and complied with a workfare program; or
- (iv) At State agency option, verifies that the he or she will meet one of the requirements in [paragraphs \(d\)\(1\)\(i\), \(d\)\(1\)\(ii\), \(d\)\(1\)\(iii\), or \(d\)\(1\)\(v\)](#) of this section, within the 30 days subsequent to application; or
- (v) Becomes exempt.

**WV IMM, Chapter 3, §3.2.1.D.1**, defines an Able-Bodied Adult Without Dependents (ABAWD) as a population of individuals who are age 18 or older, but not yet age 53. An individual who turns 18 becomes an ABAWD in the month following their birthday. An individual is no longer an ABAWD in the month of their 53rd Birthday.

**WV IMM Chapter 3, §3.2.1.D.1.a**, states:

- Effective October 1, 2022, all West Virginia counties are required to enforce the ABAWD work requirement per WV state code §9-8-2.
- Effective September 1, 2023, all 50-year-olds receiving SNAP (who are not exempt) must meet the ABAWD work requirement per the Fiscal Responsibility Act of 2023.
- Effective October 1, 2023, all 51-and-52-year-olds receiving SNAP (who are not exempt) must meet the ABAWD work requirement per the Fiscal Responsibility Act of 2023.

**WV IMM Chapter 3, §3.2.1.D.2**, states that for SNAP AGs, any individual who meets the definition of an ABAWD and who is normally required to be included in the AG can only receive benefits when he is otherwise eligible and:

- Meets the work requirements outlined below or meets an exemption listed below;
- Is in his first three-month period while not meeting the ABAWD work requirement or being exempt within the 36-month period; or
- Regains eligibility after meeting the ABAWD work requirement and is in his additional three-month period, which must be consecutive months.

**WV IMM Chapter 3, §3.2.1.D.4**, states in pertinent part, that an individual is exempt if he:

- Is responsible for the care of an incapacitated person, whether or not the person receiving the care resides with the client, and whether or not the incapacitated person is a member of the AG. **The incapacity of the person must be verified through a written statement from a doctor, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, or a licensed or certified psychologist. Caring for an incapacitated person must prevent the client from being able to complete a work activity. If questionable, written verification is required.** [Emphasis added]

**WV IMM Chapter 3, §3.2.1.D.7**, explains that an individual whose benefits are denied or terminated under the ABAWD policy can become eligible again when:

- He no longer meets the definition of an ABAWD;
- He is currently meeting the ABAWD work requirement; or
- He becomes exempt as specified above. Individuals who regain eligibility by meeting one of the standards above must maintain eligibility monthly by continuing to meet those standards.

### **Verification Policy:**

**Code of Federal Regulations, 7 CFR 273.2(f)**, in part:

(f) **Verification.** Verification is the use of documentation or a contact with a third party to confirm the accuracy of statements or information. The State agency must give households at least 10 days to provide required verification.

**Code of Federal Regulations, 7 CFR 273.2(f)(2)(i)**, provides, in part:

(2) **Verification of questionable information.**

(i) The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level. The State agency shall establish guidelines to be followed in determining what shall be considered questionable information. These guidelines shall not prescribe verification based on race, religion, ethnic background, or national origin. These guidelines shall not target groups such as migrant farmworkers or American Indians for more intensive verification under this provision.

**Code of Federal Regulations, 7 CFR 273.2(f)(3)(i)** provides, in part:

**State agency options.** In addition to the verification required in paragraphs (f)(1) and (f)(2) of this section, **the State agency may elect to mandate verification of any other factor which affects household eligibility or allotment level**, including household size where not questionable. Such verification may be required Statewide or throughout a project area, but shall not be imposed on a selective, case-by-case basis on particular households. [Emphasis added]

**WV IMM, Chapter 1, §1.3.1.A.3**, in part:

When the Worker does not have sufficient information to make a decision, it is necessary to complete form DFA-6 or verification checklist to inform the applicant of the additional information needed. All requests for verification must be made using the DFA-6 form and/or verification checklist. The Worker must clearly state on the form what items must be returned by the applicant, as well as the date by which the information must be returned. The applicant's failure to return information or the return of incomplete or incorrect information that prevents a decision from being made on the application will be considered failure to provide verification and will result in a denial of the application.

Additional information requested from the applicant is due 10 calendar days from the date of the DFA-6 or verification checklist. **(WV IMM, Chapter 1, §1.4.8)**

Verification of a client's statement is required when it is incomplete. **(WV IMM, Chapter 7, §7.2.1)**

**WV IMM, Chapter 7, §7.2.4**, in relevant part:

The Worker has the following responsibilities in the verification process:

- At application, redetermination, and anytime a DFA-6 is used, the Worker must list all required verification known at the time. The Worker should only request additional verification if information provided is incomplete or additional information is necessary to determine eligibility.
- ...
- When the Worker receives information about the SNAP AG during the certification period that requires additional clarification or verification, the Worker may send a DFA-6 or may request, but not require, the client report to the office for an interview.

**Pre-Hearing/Fair Hearing Rights:**

**WV IMM Chapter 9, §9.3.1.D.3:**

When the client requests a Pre-Hearing Conference or a Fair Hearing before the date of proposed closure or reduction, benefits are restored or reinstated immediately, whether or not the client requests reinstatement. If the client specifically requests benefits not be reinstated— verbally, by checking the appropriate section of the DFA-FH-1, or in some other written manner—no reinstatement action will be taken. No change is made in AG status or benefit levels related to the current issue until a final decision is made as a result of a Pre-Hearing Conference or Fair Hearing. Other changes may occur during the Hearing process. If this happens, the client must receive proper notification of these other changes. If the client does not request a Pre-Hearing Conference or a Fair Hearing on these subsequent changes, the changes are made, even though the first change is in Pre-Hearing Conference or Hearing status. If the client requests a Pre-Hearing Conference or a Fair Hearing on the subsequent changes, the Worker must take action depending on whether the client requests a Pre-Hearing Conference or a Fair Hearing only.

**DISCUSSION**

The Able-Bodied Adult Without Dependents (ABAWD) work requirements policy for SNAP recipients became effective in all West Virginia counties on July 1, 2023. Individuals who meet the definition of ABAWD, who are not otherwise exempt, are required to meet the work requirement. The Respondent contends that the Appellant failed to comply with the ABAWD work requirements or was otherwise exempt after receipt of three months of SNAP benefits and therefore his SNAP benefits should be terminated, effective September 30, 2023. On August 28, 2023, notification of SNAP benefit closure due to the Appellant's failure to meet ABAWD work requirements was sent to the Appellant. The Appellant brings this appeal asserting he does meet the caregiver exemption to ABAWD work requirements policy.

The Respondent must show by a preponderance of evidence that it correctly followed policy in its decision to close the Appellant's SNAP benefits due to not meeting the ABAWD work requirements or an exemption.

The Appellant testified that he must care for his disabled father and believes he should qualify for an exemption from the work requirement. The Appellant reported this information to the Respondent on his Hearing Request form (DFA-FH-1) which was received by the Respondent on September 6, 2023, prior to the proposed closure of his SNAP benefits.

In order to establish the ABAWD caregiver exemption, policy requires that the incapacity of the person be verified through a written statement from a doctor, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, or a licensed or certified psychologist. Ms. Williams testified that she attempted to call the Appellant when she received the fair hearing request to discuss the possible exemption he had noted. However, no evidence was presented to show that a verification checklist was issued to the Appellant. Policy requires that a verification checklist be issued when a client's statement is incomplete. The Appellant must have had an opportunity to establish the exemption and provide any needed information within the policy-allowed timeframe. Therefore, the Respondent's decision to close the Appellant's SNAP benefits for failing to meet ABAWD work requirements or establish an exemption cannot be affirmed.

It is also noted that the submitted Hearing Request Notification (ig-br-29) form completed by the Department Representative indicated that the Appellant's benefits were not pending the hearing decision. The Appellant did not mark on the timely submitted DFA-FH-1 section that he did not wish to continue receiving benefits pending the Fair Hearing. Per policy, the Appellant's SNAP benefits should have remained open as his hearing request was submitted prior to the proposed closure of his SNAP benefits.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that all SNAP recipients between the ages of 18 and 52 years of age are subject to the Able-Bodied Adults Without Dependents (ABAWD) work requirements unless otherwise exempt.
- 2) The Appellant was required to meet the ABAWD work requirement or provide verification of his exemption prior to September 30, 2023.
- 3) Policy requires when the Department does not have sufficient information to make a decision, it is necessary to complete form DFA-6 or verification checklist in order to inform the individual of the additional information necessary to determine eligibility.
- 4) Because the Appellant notified the Respondent in a timely manner that he was exempt from the ABAWD work requirements and the Respondent needed more information to make that determination, a verification checklist should have been issued to the Appellant.
- 5) Because the Respondent failed to issue a DFA-6 or verification checklist asking the Appellant to provide additional or clarifying information as a result of possible exemption



to ABAWD work requirements, the Respondent was unable to make a correct determination regarding the Appellant's SNAP benefits.

- 6) Policy requires the Respondent to continue benefits when a fair hearing request is submitted in a timely manner pending the fair hearing decision.
- 7) Because the Appellant submitted his fair hearing request in a timely manner, the Respondent incorrectly closed the Appellant's benefits prior to the fair hearing decision.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to close the Appellant's SNAP benefits beginning October 01, 2023. It is hereby **ORDERED** that the Appellant's SNAP benefits be reinstated and made retroactive to the date of termination. The matter is **REMANDED** for issuance of a verification checklist and determination whether the Appellant meets the reported ABAWD exemption.

**ENTERED this 6<sup>th</sup> day of October 2023.**

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Lori Woodward, Certified State Hearing Officer