

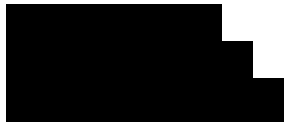


**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

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

**Christopher G. Nelson
Interim Inspector General**

November 8, 2023



RE: [REDACTED] v. WV DHHR
ACTION NO.: 23-BOR-2990

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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

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

cc: Angela Mitchem, [REDACTED] DHHR

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

██████████,

Appellant,

v.

Action Number: 23-BOR-2990

**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 31, 2023, on an appeal filed September 26, 2023.

The matter before the Hearing Officer arises from the September 15, 2023, decision by the Respondent to terminate the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Harold Mitchem, Economic Service Worker. The Appellant was self-represented. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

None

Appellant's Exhibits:

*None

*The Appellant requested medical records used to determine disability for Medicaid benefits in 2013 be submitted as evidence on his behalf. Medical records are not retained by the Respondent for more than three years and were unavailable.

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) In May 2023, a notice was mailed to the Appellant explaining Able-Bodied Adults Without a Dependent (ABAWD) work requirements and exceptions to work requirements.
- 3) The Appellant received SNAP benefits in July, August, and September 2023.
- 4) On September 15, 2023, the Respondent sent a notice to the Appellant advising that he would not receive SNAP benefits after September 30, 2023, as he had received SNAP for the first three (3) month period without meeting the ABAWD work requirement or meeting an exemption.

APPLICABLE POLICY

Code of Federal Regulations Title 7 §273.24 explains ABAWD participation in SNAP:

(a) Definitions

(1) ***Fulfilling the work requirement*** means:

- (i) Working 20 hours per week, averaged monthly; for purposes of this provision, 20 hours a week averaged monthly means 80 hours a month;
- (ii) Participating in and complying with the requirements of a work program 20 hours per week, as determined by the State agency;
- (iii) Any combination of working and participating in a work program for a total of 20 hours per week, as determined by the State agency; or
- (iv) Participating in and complying with a workfare program;

(2) ***Working*** means:

- (i) Work in exchange for money;
- (ii) Work in exchange for goods or services (“in kind” work); or
- (iii) Unpaid work, verified under standards established by the State agency.
- (iv) Any combination of [paragraphs \(a\)\(2\)\(i\), \(a\)\(2\)\(ii\) and \(a\)\(2\)\(iii\)](#) of this section.

(3) **Work Program** means:

(i) A program under title 1 of the Workforce Innovation and Opportunity Act (WIOA) (Pub. L.113–128);

(ii) A program under section 236 of the Trade Act of 1974 ([19 U.S.C. 2296](#));

(iii) An employment and training program operated or supervised by a State or political subdivision of a State agency that meets standards approved by the Chief Executive Office, including a SNAP E&T program under § 273.7(e) excluding any job search, supervised job search, or job search training program. However, a program under this clause may contain job search, supervised job search, or job search training as subsidiary activities as long as such activity is less than half the requirement. Participation in job search, supervised job search, or job search training as subsidiary activities that make up less than half the requirement counts for purposes of fulfilling the work requirement under [paragraph \(a\)\(1\)\(ii\)](#) of this section.

(iv) A program of employment and training for veterans operated by the Department of Labor or the Department of Veterans Affairs. For the purpose of this paragraph, any employment and training program of the Department of Labor or Veterans Affairs that serves veterans shall be an approved work program; or

(v) A workforce partnership under [§ 273.7\(n\)](#)

(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\(c\)\(18\)\(i\)](#).

(2) **Good cause.** As determined by the State agency, if an individual would have fulfilled the work requirement as defined in [paragraph \(a\)\(1\)](#) of this section, but missed some hours for good cause, the individual shall be considered to have fulfilled the work requirement if the absence from work, the work program, or the workfare program is temporary. Good cause shall include circumstances

beyond the individual's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation. In addition, if the State agency grants an individual good cause under [§ 273.7\(i\)](#) for failure or refusal to meet the mandatory E&T requirement, that good cause determination confers good cause under this paragraph, except in the case of [§ 273.7\(i\)\(4\)](#), without the need for a separate good cause determination under this paragraph. Good cause granted under [§ 273.7\(i\)\(4\)](#) only provides good cause to ABAWDs for failure or refusal to participate in a mandatory SNAP E&T program, and does not confer good cause for failure to fulfill the work requirement in [paragraph \(a\)\(1\)](#) of this section.

(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](#)).

(4) ***Treatment of income and resources.*** The income and resources of an individual made ineligible under this [paragraph \(b\)](#) shall be handled in accordance with [§ 273.11\(c\)\(2\)](#).

(5) ***Benefits received erroneously.*** If an individual subject to this section receives SNAP benefits erroneously, the State agency shall consider the benefits to have been received for purposes of this provision unless or until the individual pays it back in full.

(6) ***Verification.*** Verification shall be in accordance with [§ 273.2\(f\)\(1\)](#) and [\(f\)\(8\)](#).

(7) ***Reporting.*** A change in work hours below 20 hours per week, averaged monthly, is a reportable change in accordance with [§ 273.12\(a\)\(1\)\(viii\)](#). Regardless of the type of reporting system the State agency assigns to potential ABAWDs, the State agency must adhere to the statutory requirements of time-limited benefits for individuals who are subject to the work requirement. The State agency may opt to consider work performed in a job that was not reported according to the requirements of [§ 273.12](#) “work.”

(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 (emphasis added).**

(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 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.

(2) An individual regaining eligibility under [paragraph \(d\)\(1\)](#) of this section shall have benefits calculated as follows:

(i) For individuals regaining eligibility by working, participating in a work program, or combining hours worked and hours participating in a work program, the State agency may either prorate benefits from the day the 80 hours are completed or from the date of application, or

(ii) For individuals regaining eligibility by participating in a workfare program, and the workfare obligation is based on an estimated monthly allotment prorated back to the date of application, then the allotment issued must be prorated back to this date.

(3) There is no limit on how many times an individual may regain eligibility and subsequently maintain eligibility by meeting the work requirement.

(e) ***Additional three-month eligibility.*** An individual who regained eligibility under [paragraph \(d\)](#) of this section and who is no longer fulfilling the work requirement as defined in [paragraph \(a\)](#) of this section is eligible for a period of three consecutive countable months (as defined in [paragraph \(b\)](#) of this section), starting on the date the individual first notifies the State agency that he or she is no longer fulfilling the work requirement, unless the individual has been satisfying the work requirement by participating in a work or workfare program, in which case the period starts on the date the State agency notifies the individual that he or she is no longer meeting the work requirement. An individual shall not receive benefits under this [paragraph \(e\)](#) more than once in any three-year period.

West Virginia Income Maintenance Manual Chapter 3 explains ABAWD eligibility and exemptions:

3.2.1.D.1.a Expanding the Target Audience

- 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.

3.2.1.D.2 ABAWD Eligibility

For SNAP Assistance Groups, 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.

3.2.1.D.3 ABAWD Work Requirement

An ABAWD must meet the following ABAWD work requirements, in addition to the SNAP work requirements in Chapter 14, to be eligible. All work hours must be verified, including in-kind services and unpaid work. As long as an ABAWD is exempt as found in the exemptions below or meets any of the requirements below, he may receive SNAP benefits, if otherwise eligible. Otherwise, he is ineligible once he has received SNAP benefits for three months without being exempt or meeting the ABAWD work requirement. The three months need not be consecutive and include SNAP benefits received from another state. The ABAWD work requirement is met by either:

- Working at least 20 hours per week or 80 hours a month;
- Participating in a work program such as, but not limited to: WorkForce Innovation and Opportunity Act (WIOA) Title I programs or a refugee resettlement program, at least 20 hours per week or 80 hours per month; or
- Participating in a SNAP E&T program for the required number of hours.

3.2.1.D.3.a Good Cause for Not Meeting ABAWD Work Requirements

An ABAWD who would have fulfilled the work requirement through working (paid or unpaid), participating in a work program such as SNAP E&T, or a combination of working and participating in a work program, but missed some hours for good cause, would be considered to have fulfilled the work requirement if the absence from work or the work program is temporary. A temporary period is considered less than a one-month period. Good cause includes circumstances beyond the individual's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation. If an ABAWD is granted good cause in any month for not meeting the ABAWD work requirement, the individual cannot receive a countable ABAWD month in the same period. It is the responsibility of the ABAWD to report to the agency why they are unable to meet the ABAWD work requirement. The worker must document granting good cause in the case record.

3.2.1.D.4 Exemptions from ABAWD Time Limits and ABAWD Work Requirements

SNAP benefits received while exempt do not count toward the three-month limit. An individual is exempt if he:

- Receives SNAP benefits in a SNAP AG that contains an individual under the age of 18, even if the household member who is under 18 is not eligible for SNAP himself;
- 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.
- Is receiving Unemployment Compensation Insurance (UCI). An individual who has applied for but is not yet receiving unemployment compensation is also exempt if he is complying with the unemployment application process, including those applying out of state. This includes persons receiving benefits under the Trade Readjustment Allowance (TRA);

- Is certified as physically or mentally unfit for employment according to the provisions in Section 13.15;
- Is a veteran of any United States military branch, regardless of discharge status. This includes individuals who served through the Army, Navy, Marine Corp, Air Force, Space Force, Coast Guard, National Guard, including those who served in a reserve component of the Armed Forces.
- Is pregnant, regardless of the expected date of delivery. The pregnancy must be verified;
- Is a regular participant in a drug addiction or alcoholic treatment and rehabilitation program when the participation in this program would prevent the individual from meeting the work requirement or participating in an employment/training program the required number of hours. When exempting ABAWDs due to participating in a drug addiction or alcoholic treatment and rehabilitation program, the Worker must verify the number of hours the client must commit to the program to determine if the individual is exempt;
- Is a student enrolled at least half-time in any recognized school, training program, or institution of higher education. Students enrolled at least half-time in an institution of higher education must still meet the student eligibility requirements found above to be eligible for SNAP;
- Is hired for work at least 30 hours per week;
- Is hired for work paying the equivalent of at least 30 hours times the federal minimum wage per week; or
- Is aged 24 years or younger and was in foster care on their 18th birthday. The former foster individual must have aged out of custody at the maximum allowable age. This could be older than 18 in other states. The former foster individual can receive this exemption until they turn 25 years old.
- Is meeting the definition of a homeless individual. An individual is considered homeless when they are living without shelter, residing in a shelter, sleeping in an area not designed to accommodate human beings, or have inconsistent housing. An individual who is living in a shelter, without shelter, or in an area not designed to accommodate human beings is homeless regardless of the amount of time spent in that living arrangement. After 90 consecutive days in one residence an individual is no longer considered to have inconsistent housing and is no longer considered homeless.
- Is the recipient of a discretionary exemption through the Division of Family Assistance (DFA). For any month in which a discretionary exemption has been granted, a case comment will be entered into the eligibility system. These exemptions qualify the individual to participate immediately, if otherwise eligible. These exemptions are only applicable to the ABAWD time limit and ABAWD work requirement and do not automatically exempt the individual from the SNAP work requirements in Chapter 14.

3.2.1.D.5 Determining the 36-Month Period

For all individuals, regardless of client's status or the county or state of residence, the first 36-month period began January 2016. The 36-month period remains fixed. Receiving SNAP months without being exempt or meeting the work requirement in another state counts towards the client's three-month limit in West Virginia. The worker must only count such months within the current 36-month period.

3.2.1.D.6 Determining the Three-Month Limit

Months in which the client received prorated benefits do not count toward the three-month limit. When circumstances change so that an Issuance Limited County (ILC) ABAWD, who has been exempt or meeting the Requirement, is no longer meeting an exemption or the work requirement, the first full countable month of the limit would be the month of benefits after the exemption ended.

West Virginia Income Maintenance Manual Chapter 13 explains establishing disability and fitness for employment for the SNAP program:

13.15.2 Establishing a Client as Disabled

Disabled means the individual is receiving one of the following:

- Supplemental Security Income (SSI)
- Social Security Disability benefits
- Federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act based on disability or blindness criteria under Title XVI of the Social Security Act
- Federally or State-administered supplemental benefits under section 212(a) of Pub. L. 93-66
- Disability retirement benefits from a government agency based upon a permanent disability
- VA disability benefits rated by the VA as total or paid as total
- VA aid and attendance or housebound benefits, either as a veteran or as a surviving spouse
- Surviving spouse or surviving child benefits of a veteran when the individual has a disability considered permanent
- Annuity payment under Railroad Retirement Act of 1974 and is eligible for Medicare through Railroad Retirement and is determined disabled
- Interim assistance benefits pending receipt of SSI
- Disability related medical assistance under Title XIX (Medicaid based upon disability)
 - Eligible Medicaid categories: SSI, Disabled Adult Children, Substantial Gainful Activity, Essential Spouses, Pass-Throughs, Pickle Amendment Coverage, Disabled Widows and Widowers, Drug Addicts and Alcoholics, SSI-Related, Medicaid Work Incentive Network (M-WIN), Nursing Home, Aged and Disabled Waiver,
 - Intellectual/Developmental Disabilities, Intermediate Care Facility/Individuals with Intellectual Disabilities (ICF/IID), Traumatic Brain Injury (TBI), Children with Disabilities Community Service Program (CDCSP), Non-citizen Emergency Medicaid,
- State general assistance benefits based on disability or blindness

13.15.3 Establishing a Client as Unfit for Employment

This policy applies only to student policy, SNAP work requirements, and Able-Bodied Adults Without Dependents (ABAWD) policy.

- A client who meets the definition of disability is considered to be unfit for employment. No other verification is needed. **A client who does not meet the definition of disability should be evaluated for fitness for employment** (emphasis added). If it is obvious to the worker that the client is unfit for employment, then no further verification is needed, but thorough case comments must be entered explaining why the client is obviously unfit for employment.

- **A client who does not meet the definition of disability and is not obviously unfit for employment will be requested to provide written verification from a licensed medical professional that the client is unfit for employment** (emphasis added).

DISCUSSION

Pursuant to policy and federal regulation, an individual who meets the definition of an ABAWD must be working at least 20 hours per week, or 80 hours per month, or meet an exemption to receive SNAP benefits. An ABAWD may receive three months of SNAP benefits during a 36-month period without compliance with work requirements.

The Respondent notified the Appellant of ABAWD work requirements and exemptions in May and June 2023. After receiving three months of SNAP benefits without meeting work requirements or an ABAWD work requirement exemption, the Respondent terminated the Appellant's SNAP benefits.

The Appellant testified that he is disabled and unable to work. The Appellant stated he previously received Social Security Disability, but the benefit was terminated in 2019 due to "non-medical administrative leave" when he was hospitalized. The Appellant stated he reapplied for Social Security Disability in 2021 and his claim is currently pending. The Appellant contended that he is unable to receive copies of his psychiatric medical records due to confidentiality issues.

Policy and federal regulations stipulate that a SNAP recipient is exempt from ABAWD work requirements if the recipient is certified as physically or mentally unfit for employment. If the recipient is not receiving disability benefits from a federal agency, is receiving Medicaid benefits based upon disability, or if the unfitness is not obvious, the recipient is required to provide a statement from a licensed medical professional documenting that he or she is physically or mentally unfit for employment.

The Appellant failed to report the ABAWD work requirement exemption prior to the termination of his SNAP benefits or provide a statement from a medical professional documenting that he is physically or mentally unfit for employment. The Appellant is not currently receiving federal disability benefits or Medicaid benefits based on disability. Therefore, the Appellant's ABAWD work requirement exemption could not be established.

The Respondent's decision to terminate the Appellant's SNAP benefits for failure to meet ABAWD work requirements, or meet an exemption, is affirmed.

CONCLUSIONS OF LAW

- 1) Pursuant to policy and federal regulation, an individual who meets the definition of an ABAWD must be working at least 20 hours per week, or 80 hours per month, or meet an exemption to receive SNAP benefits.

- 2) Individuals who meet the definition of disability by the receipt of federal disability benefits or Medicaid benefits based on disability are exempt from ABAWD work requirements.
- 3) If an individual does not meet the definition of disability, fitness for employment must be evaluated.
- 4) If fitness for employment is not obvious, the inability to work due to mental or physical limitations must be documented by a licensed medical professional.
- 5) The Appellant does not receive federal disability benefits or disability-related Medicaid benefits.
- 6) The Appellant failed to provide documentation from a licensed medical professional that he is unable to work.
- 7) An exemption from ABAWD work requirements for the Appellant could not be established.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to terminate the Appellant's Supplemental Nutrition Assistance Program benefits.

ENTERED this 8th day of November 2023.

Kristi Logan
Certified State Hearing Officer