



**STATE OF WEST VIRGINIA
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

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

**Christopher G. Nelson
Interim Inspector General**

January 23, 2024



RE: [REDACTED] v. WV DoHS BFA
ACTION NO.: 23-BOR-3569

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 Human Services. 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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Trevor Wayne, Department Representative

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

██████████,

Appellant,

v.

Action Number: 23-BOR-3569

**WEST VIRGINIA DEPARTMENT OF
HUMAN SERVICES BUREAU FOR
FAMILY ASSISTANCE,**

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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on December 19, 2023, on a timely appeal filed November 21, 2023.

The matter before the Hearing Officer arises from the November 17, 2023 decision by the Respondent to reduce the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Trevor Wayne. The Appellant was represented by her husband, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Case comments from the Respondent's data system regarding the Appellant's case
 Notice of decision, dated November 17, 2023
 ABAWDs 36 month tracking screen print from the Respondent's data system
 regarding the Appellant's case

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 for a two-person assistance group.
- 2) On November 17, 2023, the Respondent sent a notice to the Appellant advising that her husband, [REDACTED] would no longer be included in the SNAP assistance group after November 30, 2023, as he had received SNAP for the first three (3) month period without meeting the Able-Bodied Adults Without Dependents (ABAWD) work requirement or an exemption. (Exhibit D-1)
- 3) The Appellant's monthly SNAP allotment was reduced from \$511 to \$267, effective December 1, 2023. (Exhibit D-1)
- 4) Effective October 1, 2023, in accordance with the Fiscal Responsibility Act of 2023, the ABAWD population was expanded to include 50-year-old to 52-year-old SNAP recipients.
- 5) The Appellant's husband, [REDACTED] was 50 years old in September 2023.
- 6) The Appellant was not notified of the October 2023 policy change or the resulting change in her husband's ABAWD months.
- 7) The Appellant's husband contends that he is needed in the home to care for the Appellant, an incapacitated individual.
- 8) The Appellant was not provided a verification checklist to establish the validity of a potential ABAWD policy 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.

(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.

(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.

DISCUSSION

The Appellant requested a hearing to appeal the Respondent's decision to reduce the Appellant's SNAP benefits. The basis of the SNAP benefit reduction was the exclusion of the Appellant's husband from her SNAP assistance group (AG) due to ABAWD policy limiting the amount of time an individual defined as an ABAWD may receive SNAP benefits without complying with the work requirements or meeting an exemption to that policy. The Respondent must show by a preponderance of the evidence that it correctly reduced SNAP benefits on this basis.

The Appellant's husband, [REDACTED], meets the policy definition of an ABAWD. However, this is because of a change in the age component of the ABAWD definition. [REDACTED] testified regarding his age, but the policy changed to expand the population considered ABAWDs. The Respondent provided evidence (Exhibit D-1) showing they counted [REDACTED] ABAWD months as September, October, and November 2023. Policy states that "...effective September 1, 2023, all 50-year-olds receiving SNAP (who are not exempt) must meet the ABAWD work requirement..."

The Appellant's husband proposed an exemption to the ABAWD policy. Upon receipt of the November 2023 (Exhibit D-1) adverse action notice, [REDACTED] reported to the Respondent that he was needed in the home to care for the Appellant, an incapacitated individual. This potential exemption requires verification, and verification had not been provided prior to the SNAP reduction or prior to the hearing. This Hearing Officer has information and belief that, ordinarily, notices were sent to SNAP households in May 2023, advising these households of the resumption of ABAWD policy, applicable time limits, and how to meet the work requirements or establish an exemption. The Respondent did not provide this letter, if sent, in the evidence for this hearing. If the Respondent did not send a May 2023 letter, but did send a September 2023 letter because, at

that point [REDACTED] was subject to the policy, there is no evidence of this in the hearing record either. Finally, once [REDACTED] reported to the Respondent of a potential exemption, the Respondent did not provide evidence to show it delivered a verification checklist to the Appellant, explaining what verification was needed to establish the exemption and the deadline for providing it.

Based on the limited, reliable evidence and testimony provided at hearing, the Respondent's decision to reduce the Appellant's SNAP for failure to comply with ABAWD requirements cannot be affirmed. This case is remanded to the Respondent to issue a verification checklist regarding [REDACTED] potential exemption prior to any SNAP reduction based on his exclusion from the SNAP AG due to ABAWD time limits.

CONCLUSIONS OF LAW

- 1) Because the Appellant was not notified of ABAWD requirements, exemptions, or deadlines in either a May 2023 notice or a September 2023 notice, the Respondent may not impose an ABAWD reduction on a household with a potential exemption.
- 2) Because the Appellant contended a potential exemption, but the Respondent failed to issue a verification checklist outlining any necessary verifications and deadline for this exemption, the Respondent may not act to reduce the Appellant's SNAP benefits without first exploring this potential exemption.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the decision of the Respondent to reduce the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits. This case is **REMANDED** to the Respondent to issue a verification checklist to the Appellant prior to ultimately including or excluding the Appellant's husband in the SNAP benefits.

ENTERED this ____ day of January 2024.

Todd Thornton
State Hearing Officer