



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

February 7, 2024

[REDACTED]

RE: [REDACTED] v. WV DEPARTMENT OF HUMAN SERVICES BUREAU  
FOR FAMILY ASSISTANCE  
ACTION NO.: 23-BOR-3724

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 ensure 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: Recourse to Hearing Decision  
Form IG-BR-29

cc: Angela Mitchem, [REDACTED] DoHS

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

██████████,

**Appellant,**

**v.**

**Action Number: 23-BOR-3724**

**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 February 6, 2024, on an appeal filed on December 13, 2023.

The matter before the Hearing Officer arises from the September 27, 2023, decision by the Respondent to reduce the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Robin Winfree, Economic Service Worker. The Appellant represented herself. Appearing as a witness for the Appellant was her daughter, ██████████. All witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

None

**Appellant's Exhibits:**

- A-1 Notice of Decision dated February 13, 2023
- A-2 Notice of Decision dated November 28, 2023
- A-3 Paystubs for ██████████
- A-4 Employer Statement dated November 9, 2023
- A-5 Paystubs for the Appellant

- A-6 Disability/Incapacity Medical Assessment Form signed November 2, 2023
- A-7 Printout from [www.SNAP Screener.com](http://www.SNAP Screener.com)
- A-8 Printout from [www.dhhr.wv.gov](http://www.dhhr.wv.gov)
- A-9 Signature Page from SNAP Application Form
- A-10 Notice of Decision dated December 21, 2023

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 three-person assistance group.
- 2) The Appellant submitted a SNAP periodic reporting form to the Respondent on or around September 1, 2023.
- 3) The Respondent issued a notice on September 27, 2023, advising the Appellant that her monthly SNAP benefits, effective October 1, 2023, would be \$47.
- 4) The notice indicated that [REDACTED] was ineligible for SNAP benefits as she was an Able-Bodied Adult Without a Dependent (ABAWD) who had received three months of SNAP benefits without meeting a work requirement or an exemption.
- 5) [REDACTED] was not included in the SNAP assistance group as an ineligible student.

### **APPLICABLE POLICY**

*Code of Federal Regulations Title 7 §273.5 explains SNAP eligibility for students:*

(a) **Applicability.** An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in SNAP unless the individual qualifies for one of the exemptions contained in [paragraph \(b\)](#) of this section. An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum or if the individual is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(b) **Student Exemptions.** To be eligible for the program, a student as defined in paragraph (a) of the section must meet at least one of the following criteria.

- (1) Be age 17 or younger or age 50 or older;
- (2) Be physically or mentally unfit;
- (3) Be receiving Temporary Assistance for Needy Families under Title IV of the Social Security Act;

- (4) Be enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program;
- (5) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours. The State agency may choose to determine compliance with this requirement by calculating whether the student worked an average of 20 hours per week over the period of a month, quarter, trimester or semester. State agencies may choose to exclude hours accrued during academic breaks that do not exceed one month. A State agency that chooses to average student work hours must specify this choice and specify the time period over which the work hours will be averaged in its State plan of operation;
- (6) Be participating in a State or federally financed work study program during the regular school year.
- (i) To qualify under this provision, the student must be approved for work study at the time of application for SNAP benefits, the work study must be approved for the school term, and the student must anticipate actually working during that time. The exemption shall begin with the month in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption shall continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.
- (ii) The exemption shall not continue between terms when there is a break of a full month or longer unless the student is participating in work study during the break.
- (7) Be participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer;
- (8) Be responsible for the care of a dependent household member under the age of 6;
- (9) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when the State agency has determined that adequate child care is not available to enable the student to attend class and comply with the work requirements of [paragraph \(b\)\(5\)](#) or [\(b\)\(6\)](#) of this section;
- (10) Be a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.
- (i) This provision applies in those situations where only one natural, adoptive or stepparent (regardless of marital status) is in the same SNAP household as the child.
- (ii) If no natural, adoptive or stepparent is in the same SNAP household as the child, another full-time student in the same SNAP household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse.
- (11) Be assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the programs identified in [paragraphs \(b\)\(11\)\(i\) through \(b\)\(11\)\(iv\)](#) of this section. Self-initiated placements during the period of time the person is enrolled in one of these employment and training programs shall be considered to be in compliance with the requirements of the employment and training program in which the person is enrolled provided that the program has a component for enrollment in an institution of higher education and that program accepts the placement. Persons who voluntarily participate in one of these employment and training programs and are placed in an institution

of higher education through or in compliance with the requirements of the program shall also qualify for the exemption. The programs are:

- (i) A program under the Job Training Partnership Act of 1974 ([29 U.S.C. 1501](#), *et seq.*);
- (ii) An employment and training program under [§273.7](#), subject to the condition that the course or program of study, as determined by the State agency:
  - (A) Is part of a program of career and technical education as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 ([20 U.S.C. 2302](#)) designed to be completed in not more than 4 years at an institution of higher education as defined in section 102 of the Higher Education Act of 1965 ([20 U.S.C. 2296](#)); or
  - (B) is limited to remedial courses, basic adult education, literacy, or English as a second language.
- (iii) A program under section 236 of the Trade Act of 1974 ([19 U.S.C. 2296](#)); or
- (iv) An employment and training program for low-income households that is operated by a State or local government where one or more of the components of such program is at least equivalent to an acceptable SNAP employment and training program component as specified in [§273.7\(e\)\(1\)](#). Using the criteria in [§273.7\(e\)\(1\)](#), State agencies shall make the determinations as to whether or not the programs qualify.
- (c) The enrollment status of a student shall begin on the first day of the school term of the institution of higher education. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer school).
- (d) The income and resources of an ineligible student shall be handled as outlined in [§273.11\(d\)](#).

*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 eligibility determination groups:*

### **3.2.1.E Students**

A student is an individual who is enrolled at least half-time in a recognized school, training program or institute of higher education. A student enrolled at an institute of higher education is ineligible to participate in SNAP unless the individual qualifies for one of the exemptions described below.

- An institution of higher education is defined as a business, technical, trade, or vocational school that normally requires a high school diploma or its equivalent for enrollment in the curriculum, or a college or university that offers degree programs whether or not a high school diploma is required for a particular curriculum.
- For this definition, a college includes a junior, community, two-year, or four-year college.

#### **3.2.1.E.2 Exemptions**

A student meets an exemption if he is:

- Under age 18;
- Age 50 or over;



- He is physically or mentally unfit for employment. An individual who meets the definition of disability found in Section 13.15 is considered unfit for employment. Other individuals may be considered unfit for employment if it is verified through a written statement from a licensed medical professional or if it is obvious to the worker. An individual who meets the definition of unfit for employment, but not disability, should not be coded as disabled in the eligibility system;
- Participating in an on-the-job training program. This does not include the practical experience requirements that may be part of some courses of study, i.e., student teaching, internships, etc.;
  - A person is considered to be participating in on-the-job training, and thus not considered a student, during the period of time that he is being trained by the employer. He is considered a student, only during the period of time that he is attending classes.
- Employed at least 20 hours per week or 80 hours a month and is paid for the employment. This average must use a 30-day lookback period to determine if the student meets the 80-hour requirement. The 30-day period should be the same as the minimum lookback period for SNAP income;
  - Unlike normal work registration, a student cannot substitute wages equivalent to 20 times the minimum hourly wage but must actually work at least 20 hours a week or 80 hours a month, regardless of the amount of wages.
  - However, self-employed persons must be employed at least 20 hours per week or 80 hours a month and receive weekly earnings at least equal to the federal minimum wage multiplied by 20 hours or monthly earnings equal to the federal minimum wage multiplied by 80 hours.
- Participating in a state or federally financed College Work Study (CWS) program during the regular school year;
  - Participation means that the student has been approved for CWS during the school term and anticipates actually working during that time.
  - To qualify for this exemption, the student must be approved for CWS at the time of application.
  - The exemption begins with the month in which the school term begins or the month CWS is approved, whichever is later. Once begun, the exemption continues until the end of the month in which the school term ends, or it becomes known that the student refused an assignment. The exemption does not continue between school terms when there are breaks of a full month or longer, unless the student is participating in CWS during the break.
- Included in a WV WORKS benefit;
- Assigned to or placed in an institution of higher education through one of the following:
  - Workforce Innovation and Opportunity Act (WIOA)
  - Section 236 of the Trade Act of 1974
  - An employment and training program for low-income households that is operated by a state or local government when one or more of the program's components is at least equivalent to SNAP E&T
- Responsible for the care of a child under the age of six;

- Responsible for the care of an AG member who has reached the age of 6 but is under age 12 and adequate child care is not available to enable the student to attend class and satisfy the 20 hour work requirement or participate in a state or federally financed CWS program during the regular school year; or
- Is a single parent (natural, adoptive, or stepparent), regardless of marital status, and is responsible for an AG member under age 12, regardless of the availability of adequate childcare, and is enrolled full-time, as defined by the institution.
  - This applies in situations where only one natural, adoptive, or stepparent, regardless of marital status, is in the same AG with the child.
  - If no natural, adoptive, or stepparent is in the AG with the child, another full-time student in the same AG as the child may qualify for this exemption, if he has parental control over the child.

#### **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. 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).**

West Virginia Income Maintenance Manual Chapter 10 explains the case maintenance process:

### **10.4.3 Effective Date of Change**

#### **10.4.3.A Increase in Benefits**

##### **10.4.3.A.1 Addition of an AG Member**

The change must be effective no later than the month following the month in which the change is reported. When the change is reported after the system deadline, supplemental benefits must be issued and received by the 10th of the following month. The supplemental benefits are issued based upon the date the information is reported, regardless of whether or not the report is timely.

## **DISCUSSION**

Pursuant to policy and federal regulations, monthly SNAP allotments are determined by an assistance group's countable income, after all allowable deductions have been applied. The Respondent reduced the Appellant's monthly SNAP allotment when it excluded her daughter, [REDACTED], and her grandson, [REDACTED], from the SNAP assistance group effective October 1, 2023.

### **ABAWD Work Requirements**

Policy and federal regulation stipulate that 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's witness, Robin Winfree, testified that [REDACTED] was considered an ABAWD who had received three months of SNAP benefits without meeting a work requirement or exemption.

In November 2023, the Appellant submitted a Disability/Incapacity Medical Assessment (DIMA) form to the Respondent exempting [REDACTED] from SNAP work requirements (Exhibit A-6). Ms. Winfree stated that [REDACTED] was added to the SNAP assistance group effective January 1, 2024. Ms. Winfree admitted that [REDACTED] should have been added to the SNAP assistance group effective December 1, 2023, the month after the change was reported.

The Appellant testified that her daughter has resided with her since 2021 and has been unable to work for ten years. The Appellant stated that she submits a statement from [REDACTED] physician with every review form to document her inability to work. The Appellant was adamant that she provided a physician's statement with the periodic reporting form in September 2023 but was later advised by the Respondent that she had to submit the DIMA form completed by [REDACTED] physician for her to be exempt from work requirements.

Policy states 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 not 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. There is no requirement in policy that specifies that the DIMA form must be completed to meet this exemption, only that a statement from a licensed medical professional is provided documenting unfitness for employment. The Respondent did not provide any evidence for the hearing and the Respondent's witness was unable to ascertain if a physician's statement was or was not provided with the September 2023 SNAP periodic reporting form. Based on the Appellant's credible testimony and the Respondent's lack of evidence, sufficient documentation was provided exempting [REDACTED] from SNAP work requirement prior to her exclusion from the SNAP assistance

group.

### Student Policy

Policy and federal regulations define a student as an individual who is enrolled at least half-time in a recognized school, training program or institute of higher education. A student enrolled at an institute of higher education is ineligible to participate in SNAP unless the individual qualifies for an exemption. Participation in a state or federally funded college work study program is an exemption from the student policy.

The Appellant testified that [REDACTED] attends [REDACTED] full-time and participates in a college work study program. The Appellant testified that she attempted to receive clarification regarding [REDACTED] ineligibility for SNAP due to his status as a college student but was unable to receive a satisfactory answer until she contacted the Respondent's Customer Service Center in November 2023. The Appellant stated she reported [REDACTED] participation in the work study program in November 2023. The Appellant stated [REDACTED] receives compensation through the work study program (Exhibit A-4). The Appellant admitted that she did not report this income on the September 2023 periodic reporting form.

The Appellant has the responsibility to provide complete and accurate information regarding her household's circumstances so that a correct determination regarding eligibility can be made. The Appellant was required to report any and all income received by members of her SNAP assistance group on the September 2023 periodic reporting form. However, the Appellant reported [REDACTED] exemption from the SNAP student policy in November 2023 and the Respondent failed to take action on the reported change.

Whereas the Appellant provided documentation exempting [REDACTED] from ABAWD work requirements in September 2023, the Respondent erred in her removal from the SNAP assistance group. The Respondent failed to act on the reported exemption for [REDACTED] from the student policy, therefore [REDACTED] should have been added to the SNAP assistance group effective December 1, 2023.

### **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) [REDACTED] is considered an ABAWD and subject to SNAP work requirements.
- 3) The Appellant provided a statement from [REDACTED] physician exempting her from work requirements in September 2023.
- 4) [REDACTED] was eligible to be included in the Appellant's SNAP assistance group effective October 1, 2023.
- 5) A student enrolled at an institute of higher education is ineligible to participate in SNAP unless the individual qualifies for an exemption.



- 6) The Appellant reported [REDACTED] participation in a college work study program in November 2023.
- 7) [REDACTED] was eligible to be included in the Appellant's SNAP assistance group effective December 1, 2023.

### **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 benefits.

**ENTERED this 7<sup>th</sup> day of February 2024.**

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**Kristi Logan**  
**Certified State Hearing Officer**