



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

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

**Christopher G. Nelson
Interim Inspector General**

February 16, 2024

[REDACTED]

RE: [REDACTED] v. WV DoHS BFA
ACTION NO.: 24-BOR-1083

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. These same laws and regulations are used in all cases to ensure that all people 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,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

Encl: Decision Recourse
Form IG-BR-29

CC: Tera Pendleton, Client Services Department

**WEST VIRGINIA DEPARTMENT OF HEALTH
BOARD OF REVIEW**

██████████,

Appellant,

v.

Action Number: 24-BOR-1083

**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 ██████████. The hearing was held according to the provisions found in Chapter 700 of the West Virginia Board of Review's Common Chapters Manual and was convened on March 21, 2023.

The matter before the Hearing Officer arises from the Respondent's July 25, 2023 expungement of the Appellant's August 2022 Pandemic Electronic Benefits Transfer (P-EBT) benefits due to non-use of benefits.

At the hearing, the Respondent appeared by Tera Pendleton, Client Services Department. The Appellant appeared and represented herself. All witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Notice, dated August 15, 2022
D-2 Notice, dated June 5, 2023

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant received and spent P-EBT benefits from April through September 2021 (Exhibit D-3).
- 2) The Appellant did not make any P-EBT transactions between September 2021 and July 2023 (Exhibit D-3).
- 3) In April 2022, the Appellant moved from [REDACTED] and had her mail forwarded through the post office for one year.
- 4) On August 12, 2022, \$391 in P-EBT benefits were deposited on the Appellant's P-EBT card (Exhibit D-3).
- 5) On August 15, 2022, the Respondent mailed a notice to the Appellant at [REDACTED]. The notice advised that \$391 of P-EBT benefits were available and if unused, would be removed and returned to the federal government 274 days after being issued (Exhibit D-1).
- 6) On June 2, 2023, \$120 in P-EBT benefits were deposited on the Appellant's P-EBT card (Exhibit D-3).
- 7) On June 5, 2023, the Respondent mailed a notice to the Appellant at [REDACTED], advising that \$120 in P-EBT benefits were available and would be expunged after 274 days of non-use.
- 8) On July 25, 2023, \$391 in P-EBT benefits were expunged from the Appellant's P-EBT card (Exhibit D-3).

APPLICABLE POLICY

Code of Federal Regulations 7 CFR § 284.1 *Pandemic Electronic Benefits Transfer (P-EBT)* provides in relevant sections:

- (a) *Overview.* Section 1101 of the Families First Coronavirus Response Act (FFCRA)... authorized supplemental allotments to certain households. These benefits shall be referred to as Pandemic Electronic Benefits Transfer (P-EBT) benefits throughout this section

70 Fed. Reg. 70,043 (Nov. 4, 2020) (codified at 7 CFR pt. 284) was the final rule established to ensure the integrity of the supplemental allotments created by Section 1101 of the Families First Coronavirus Response Act (FFCRA). According to this final rule, the FNS was charged by Congress with the implementation of P-EBT at the Federal level. As of November 4, 2020, this rule approved the States to administer P-EBT. States chose to administer the P-EBT program by issuing P-EBT benefits on the EBT cards of current SNAP recipients or by issuing new cards to all P-EBT recipient households, regardless of their participation in SNAP. The rule explains:

Despite using the same delivery and funding mechanism, P-EBT benefits are not SNAP benefits. SNAP was authorized and is governed by the FNA, while P-EBT was separately created and is governed by the FFCRA ...

Families First Coronavirus Response Act (FFCRA) § 1101 provides in relevant parts:

- (a) *Public Health Emergency*: During fiscal year 2020, in any case in which a school is closed for at least 5 consecutive days during a public health emergency designation during which the school would otherwise be in session, each household containing at least 1 member who is an eligible child attending the school shall be eligible to receive assistance pursuant to a state agency plan ...
- (d) *Use of EBT System*: A state agency may provide assistance under this section through the EBT card system established under section 7 of the Food and Nutrition Act of 2008 ...
- (e) *Release of Information*: Notwithstanding any other provision of the law, the Secretary of Agriculture may authorize State educational agencies and school food authorities administering a school lunch program under the Richard B. Russell National School Lunch Act ... to release to appropriate officials administering the [SNAP] such information as may be necessary to carry out this section.

West Virginia Income Maintenance Manual (WVIMM) § 9.1 Introduction provides in relevant sections: An applicant must be provided with written notification of the action taken on his application. The client must be notified in advance, by writing, of any action resulting in a change of benefits before the proposed action is taken.

WVIMM § 10.3.3 Benefit Level Expungement provides in relevant sections: “Expungement” is the removal of benefits from an EBT account. Once a benefit month account has reached 274 days of non-use from the date of issuance for SNAP and 365 days from the date of last use for WV WORKS, the benefit is expunged.

WVIMM § 10.3.3.A Notification of SNAP Expungement – 229 Days from the Date of Issuance provides in relevant sections: A notice will be sent to the client advising that benefits that were issued 229 days before the date of the notice remained unused.

WVIMM § 10.3.3.C SNAP Expungement – 274 Days from the Date of issuance provides in relevant sections: A notice will be sent to the client advising that SNAP benefits have been expunged and are no longer available. The notice will also advise that they may have other benefit months remaining. The clients are also encouraged to use all monthly SNAP allotments within 274 days of receipt.

DISCUSSION

The Respondent argued that the Appellant's P-EBT benefits were properly expunged after 274 days of non-use. The Respondent argued that the August 15, 2022 notice was mailed to the Appellant's address of record and notified her that benefits would be expunged after 274 days of non-use. The Appellant argued that she did not receive notice of P-EBT benefit availability or expungement. The Appellant contended that she was unaware of the expunged benefits until she called regarding a separate issue related to her June 2023 P-EBT benefits. The Appellant contested the Respondent's expungement of her August 2022 P-EBT benefits.

Section 1101 of the Families First Coronavirus Response Act (FFCRA) authorized Pandemic Electronic Benefits Transfer (P-EBT) benefits in response to the national Coronavirus Disease 2019 (COVID-19) Public Health Emergency (PHE). P-EBT benefits were issued to households with children who would have otherwise received free or reduced-price school meals under the Richard B. Russell National School Lunch Act. The FFCRA permitted state educational agencies to release the necessary information required to implement the P-EBT program to the agency administering SNAP. The Respondent was required to rely on the state education agency to provide the Respondent with the necessary information regarding the Appellant's household to implement the P-EBT program.

The Respondent did not submit any policy sections that specifically apply to FFCRA emergency benefit noticing requirements. According to the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS), November 2, 2020 final rule, P-EBT operates within the SNAP infrastructure. USDA FNS is responsible for administering P-EBT and SNAP at the federal level. As P-EBT is administered within the SNAP infrastructure, the SNAP infrastructure's noticing policies were consulted when arriving at this decision.

The Respondent bears the burden of proof and had to demonstrate by a preponderance of evidence that the Appellant's P-EBT benefits were correctly expunged following 274 days of non-use after receiving appropriate notice before expungement.

August 15, 2022 Notice

The Respondent was required to notify the Appellant, at her address of record, of her P-EBT benefit availability. The Appellant testified that she did not receive the notice the Respondent mailed to the address provided by the state education agency.

The Appellant testified that she moved in April 2022 and her mail was properly forwarded through the post office for one year. The Respondent did not refute the asserted steps taken by the Appellant to ensure her continuity of mail receipt. The Appellant testified that she changed her address with the education agency but could not specifically identify when she made the change. No evidence was submitted by the Respondent to refute that the Appellant had notified the education agency of her address change.

The Respondent was required to rely on information provided by the education agency when administering the Appellant's P-EBT benefits. The Respondent's representative testified that the

August 2022 notice was mailed to the Appellant's address of record. The testimony and records submitted failed to establish when the Appellant reported her changed address to the education agency. The evidence demonstrated the Respondent mailed the August 15, 2022 P-EBT notice to the Appellant's then-address of record. The Board of Review cannot grant relief in the issue of unforwarded mail from the postal service. The preponderance of evidence revealed that the Respondent correctly mailed the August 15, 2022 notice to the Appellant's then-address of record, as provided by the education agency.

Expungement Notice

Although the evidence revealed that the Respondent correctly issued the August 2022 notice, the Appellant argued she was not notified of the expungement until checking on a separate P-EBT issue in 2023. Therefore, the preponderance of evidence must also reveal that the Respondent properly provided the Appellant with notice of expungement.

According to the policy, the Respondent was required to notify the Appellant when she had reached 229 days of P-EBT benefit non-use and at the 274-day expungement. The policy requires the Respondent to issue advanced notification before the proposed adverse action is taken. The submitted evidence revealed a June 5, 2023 notice advising the Appellant, at her current address of record, of \$120 in P-EBT benefits available for the June 1 through August 31, 2023 period. The June 5, 2023 notice establishes that the Respondent had the Appellant's correct address of record before the July 2023 expungement.

The submitted evidence did not verify that the Respondent mailed — to the Appellant's old or new address — written notification at 229 days of P-EBT benefits non-use or the 274-day expungement.

CONCLUSIONS OF LAW

- 1) The Respondent is required to rely on the state education agency to provide the necessary information regarding the Appellant's household to implement the P-EBT program.
- 2) The preponderance of evidence revealed that the August 15, 2022 P-EBT notice was correctly mailed to the Appellant's then-address of record.
- 3) P-EBT benefits may be expunged if benefits remain unused for 274 days from the date of issuance.
- 4) The Respondent must issue a written notice to the Appellant advising that the benefits issued 229 days before the date of the notice remain unused.
- 5) The preponderance of the evidence failed to prove that the Respondent mailed notice to the Appellant's previous or current address advising that benefits issued 229 days before the date of the notice remain unused.

- 6) The Respondent must issue a written notice to the Appellant advising that the benefits issued 274 days before the date of the notice are expunged.
- 7) The preponderance of the evidence failed to prove that the Respondent mailed a written notice to the Appellant's previous or current address advising that benefits issued 274 days before the date of the notice were expunged.
- 8) The preponderance of the evidence failed to verify that the Respondent provided the Appellant with sufficient notice before expunging her August 2022 P-EBT benefits.
- 9) Because the Appellant was not provided with sufficient notice of unused P-EBT benefits before expungement, the Respondent must reinstate the expunged benefits.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to expunge the Appellant's August 2022 P-EBT benefits. It is hereby **ORDERED** that the Appellant's August 2022 P-EBT benefits be reinstated.

Entered this 16th day of February 2024.

Tara B. Thompson, MLS
State Hearing Officer