



May 8, 2025

REMOVED

RE: **REMOVED** v. WVDHS
ACTION NO.: 25-BOR-1793

Dear **REMOVED**

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Leigh Ohlinger, Department Representative
Charles Cline, Department Representative

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

REMOVED

Appellant,

v.

Action Number: 25-BOR-1793

**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 **REMOVED**. 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 April 29, 2025, upon a timely appeal filed on April 8, 2025.

The matter before the Hearing Officer arises from a delay in application processing for Summer Electronic Benefit Transfer (S-EBT) benefits to the Appellant.

At the hearing, the Respondent appeared by Jennifer Patton. The Appellant was self-represented. All witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Excerpts from the West Virginia Income Maintenance Manual
- D-2 Application for Summer EBT, dated July 15, 2024

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 applied for Summer Electronic Benefit Transfer (S-EBT) on July 15, 2024. (Exhibit D-2)
- 2) The Respondent collaborates with the West Virginia Department of Education (WVDE) to administer the S-EBT program.
- 3) No witnesses or representatives from WVDE were present at the fair hearing.
- 4) Testimony from the Respondent representative was limited because of the limited role the Respondent (WVDoHS) has in S-EBT administration.
- 5) The Respondent did not process the Appellant's S-EBT application.
- 6) No notices letters were issued to the Appellant advising her she was approved for S-EBT benefits.
- 7) No notices letters were issued to the Appellant advising her she was denied for S-EBT benefits.
- 8) The Appellant's hearing request is timely.
- 9) The Appellant's December 2024 contact with the Respondent should have been accepted as a verbal hearing request.
- 10) The Appellant is eligible for three (3) months of S-EBT benefits, for one (1) child, in the amount of \$40 per month per child, or \$120 total.

APPLICABLE POLICY

West Virginia Income Maintenance Manual § 1.2.1.A provides, in pertinent part:

In addition to addressing all questions and concerns the client may have, the Worker must explain the benefits of each program and inform the client of his right to apply for any or all of them.

No person is denied the right to apply for any Program administered by the Division of Family Assistance (DFA) [*sic*] or the Bureau for Medical Services (BMS). Every person must be afforded the opportunity to apply for all Programs on the date he expresses his interest...

West Virginia Income Maintenance Manual Chapter 20, § 20.5 detailed the Summer EBT program during the program season. At § 20.5.1, this policy provided, in pertinent part:

Summer Electronic Benefit Transfer (Summer EBT or SEBT) is a summer feeding program that was authorized through Congressional action in the Consolidated Appropriations Act of 2023. The program is designed to supplement summer feeding for students who are out of school and missing meals provided through the National School Lunch Program (NSLP).

Summer EBT is a permanent program through USDA FNS beginning summer of 2024 and each subsequent summer operational period. In West Virginia, the compulsory school age is 6 - 17 years old. The agency must make the benefit available to students 7 - 14 days before the start of the operational period. The benefit amount will be provided annually by USDA FNS.

West Virginia Income Maintenance Manual Chapter 20, § 20.5.10 outlined the role of the local office, and provided in pertinent part:

- Accept Summer EBT applications (DFA-SEBT-1) and upload applications daily to the DoHS SEBT Coordinator.

...

Code of Federal Regulations 7 CFR §292.12 provides, in pertinent part (emphasis added):

§ 292.12 Enrolling eligible children.

(a) *Minimum requirements for Program informational activities.* Summer EBT agencies must comply with the following minimum information requirements for applicants and recipients.

(1) Summer EBT agencies must inform participant and applicant households of their Program rights and responsibilities. This information may be provided through whatever means the Summer EBT agency deems appropriate.

(2) All Program informational material must:

(i) Be in an understandable and uniform format, and to the maximum extent practicable, in a language that parents and guardians can understand;

(ii) Include the USDA nondiscrimination statement; and

(iii) Be provided in alternate formats for individuals with disabilities, as practicable.

(3) All program information material should be provided by households' preferred method of contact, to the maximum extent practicable.

(b) *General requirements.* In enrolling eligible children, Summer EBT agencies must:

- (1) Establish procedures to ensure correct eligibility determinations;
- (2) Establish procedures to allow households to provide updated contact information for the purpose of receiving Summer EBT; and
- (3) Establish procedures to enable anyone who has been determined to be eligible for Summer EBT benefits to confirm their eligibility status and unenroll, or opt out, of the Program, if they do not want to receive benefits; and
- (4) Provide assistance to households that seek help in applying for benefits.

...

(f) *Notice of approval* —

- (1) *Income applications. The Summer EBT agency must notify (or place notification in the mail) eligible households of a child's approved status within 15 operational days of receipt of a complete application.* This may be included in the mailing containing the EBT card, if applicable, or other communication informing the household about the issuance or use of benefits.

...

- (g) *Denied applications and the notice of denial.* When the application furnished by a household is not complete or does not meet the eligibility criteria for Summer EBT benefits, the Summer EBT agency must document and retain the reasons for ineligibility and must retain the denied application. In addition, **the Summer EBT agency must provide written notice to each household denied benefits within 15 operational days of receipt of a complete application.** At a minimum, this notice must include:

- (1) The specific reason or reasons for the denial of benefits, *e.g.*, income in excess of allowable limits or incomplete application;
- (2) Notification of the right to appeal;
- (3) Instructions on how to appeal; and
- (4) A statement reminding households that they may reapply for benefits at any time.

- (h) *Appeals of denied benefits. A household that wishes to appeal an application that was denied may do so in accordance with the procedures established by the Summer EBT agency as required by § 292.26.* However, prior to initiating the hearing procedure, the household may request a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference must not in any way prejudice or diminish the right to a fair hearing. The Summer EBT agency must promptly schedule a fair hearing, if requested.

...

Code of Federal Regulations 7 CFR §292.13 provides, in pertinent part (emphasis added):

§ 292.13 Application requirements.

...

(f) *Timely certifications.* Summer EBT agencies must follow-up with a household that submits an incomplete application within 10 operational days of receipt of the application. See notice of approval at § 292.12(f) for additional requirements for complete applications that are approved for benefits, and providing benefits to participants at § 292.15(c) for requirements around timely issuance of benefits for eligible children.

...

Code of Federal Regulations 7 CFR §292.15 provides, in pertinent part (emphasis added):

§ 292.15 General standards.

...

(c) *Benefit issuance* -(1) *Providing benefits to participants.* (i) **The Summer EBT agency shall ensure the timely and accurate issuance of benefits.**

(A) **For children who can be streamline certified or who have an approved Summer EBT application on file, benefits must be issued and available for participants to use at least seven calendar days and not more than 14 calendar days before the start of the summer operational period.** When the Summer EBT agency does not have sufficient data to issue a benefit to an eligible child, the agency must work to resolve the case and issue the benefit as expeditiously as possible.

(B) **For eligible children who apply after the summer operational period begins, benefits must be issued and available to spend not later than 15 operational days after a complete application is received by the Summer EBT agency, so that participants may use their benefits during the summer.**

(ii) If the Summer EBT agency issues benefits after the summer operational period, the Summer EBT agency must submit to FNS a corrective action plan outlining the reasons benefits were not issued in a timely manner, and steps the Summer EBT agency will take to ensure timely issuance in the future.

(iii) The Summer EBT agency's issuance schedule does not need to align with the start of calendar months and may include staggered benefit issuance across multiple days. Regardless of the issuance schedule, Summer EBT agencies may only issue a full three months of benefits for the summer operational period.

...

(e) *Benefit amount.*

(1) In 2024, the benefit will be \$40 per month in the summer operational period for each eligible child, and will be adjusted in subsequent years to reflect changes in the cost of food as measured by the Thrifty Food Plan (TFP). Any year-to-year decrease of the TFP will not be implemented.

...

Code of Federal Regulations 7 CFR §292.16 provides, in pertinent part (emphasis added):

§ 292.16 Issuance and adjustment requirements specific to States that administer SNAP.

...

(f) Restoration of lost benefits —

...

(3) Disputed benefits.

(i) If the Summer EBT agency determines that a household is entitled to restoration of lost benefits, but the household does not agree with the amount to be restored as calculated by the Summer EBT agency or any other action taken by the Summer EBT agency to restore lost benefits, the household may request a fair hearing within 90 days of the date the household is notified of its entitlement to restoration of lost benefits. If a fair hearing is requested prior to or during the time lost benefits are being restored, the household shall receive the lost benefits as determined by the Summer EBT agency pending the results of the fair hearing. **If the fair hearing decision is favorable to the household, the Summer EBT agency must restore the lost benefits in accordance with that decision.**

...

Code of Federal Regulations 7 CFR §292.26 provides, in pertinent part (emphasis added):

§ 292.26 Hearing procedure for families and Summer EBT agencies.

(a) **Each Summer EBT agency must establish a fair hearing procedure that is applicable to the State or ITO program as a whole.** Fair hearing procedures must:

(1) Allow a household to appeal, within 90 days after the end of the summer operational period, a decision made with respect to:

(i)

- (A) An application the household has made for Summer EBT benefits;
- (B) A streamlined certification for Summer EBT benefits; or
- (C) A verification process or procedure.

(ii) Any adverse action taken against the household by the Summer EBT agency.

(2) **Require the State to provide a household with back-benefits for Summer EBT if the fair hearing determines that the Summer EBT agency erroneously failed to issue such benefits in the correct amount to an eligible family**, an administrative disqualification for intentional Program violation was subsequently reversed, or if there is a statement elsewhere in this part specifically stating that the household is entitled to restoration of lost benefits.

...

(b) In response to an appeal, the Summer EBT agency may defend its initial decision to deny the eligibility of the child for Summer EBT benefits or take an adverse action against a household. **The fair hearing procedure must provide for both the household and the Summer EBT agency:**

...

(8) **That the decision of the hearing official must be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;**

...

DISCUSSION

The Appellant requested a fair hearing to appeal inaction on her application for Summer EBT (S-EBT) benefits during July 2024 until after the seasonal program ended, effectively denying this application. The Respondent must show, by a preponderance of the evidence, that it acted correctly in respect to the Appellant's S-EBT application.

The Respondent collaborates with the West Virginia Department of Education (WVDE) to administer the S-EBT program. Each partner is responsible for the correct processing of S-EBT applications, including notification requirements and, if necessary, verification requirements. Each partner is responsible for the correct delivery of benefits to eligible households. At the fair hearing, the Respondent was represented by a WVDoHS employee and there were no participants present from WVDE. However, the Code of Federal Regulations require a fair hearing decision to be made on "...the oral and documentary evidence presented at the hearing..." and this decision reflects the facts revealed at the hearing.

The Appellant submitted an application for S-EBT on July 15, 2024. The Respondent worker testified that WVDoHS failed to properly take the application processing steps necessary to approve the S-EBT benefits. The Respondent worker had reviewed the application (Exhibit D-2) and testified that the Appellant would have been eligible for \$120 in S-EBT benefits, or \$40 per month per child for the three (3) months of seasonal Summer EBT benefits. The Respondent worker advised that steps were not taken to resolve the Respondent's admitted error due to lack of clarity regarding the timeliness of the Appellant's hearing request.

An Appellant may request a hearing verbally or in writing. An Appellant requesting a hearing

verbally must never be told they are required to submit a written hearing request. Delays created by incorrect information disseminated by Respondent workers will not harm the timeliness of an Appellant's hearing request.

Because the action at issue in the hearing is the failure to process an application, it is a “negative action” without a notice. Ordinarily, the timeliness of a hearing is determined by the Board of Review starting with the effective date of a “negative action,” which is set by a notice. When the issue is the failure to process an application, timeliness cannot be tethered to an effective date. The Appellant filed a written hearing request in April 2025. She contacted the Respondent in December 2024 which should have been accepted as a hearing request at that time. Because of this mishandled hearing request, it is unclear if or when earlier requests were made, and the Appellant's request is accepted as timely.

The Respondent – based on oral and documentary evidence available at hearing – and its program partner, WVDE, failed to process the Appellant's S-EBT application, issue a notice of approval, denial, or a request for additional documentation. All program deadlines were missed in S-EBT application processing. The reliable testimony available at hearing indicated the Appellant was eligible for S-EBT benefits for one (1) child. Program benefits are issued at the level of “...\$40 per month...for each eligible child...”; therefore, the Respondent must issue \$120 (\$40 multiplied by three program months) in S-EBT benefits to the Appellant.

CONCLUSIONS OF LAW

- 1) Because the Appellant submitted a timely application for S-EBT benefits for one (1) eligible child, the Respondent must issue S-EBT benefits to the Appellant.
- 2) Because S-EBT benefits are issued at the level of \$40 per child, per month, and there are three (3) months the seasonal program is open, the Respondent must issue a total of \$120 in S-EBT benefits to the Appellant.

DECISION

It is the decision of the State Hearing Officer that the Respondent and its program partner delayed S-EBT application processing, and to **REMAND** this case for the issuance S-EBT benefits to the Appellant in the amount of \$120.

ENTERED this _____ day of May 2025.

**Todd Thornton
State Hearing Officer**