



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

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

**Ann Vincent-Urling  
Interim Inspector General**

March 6, 2024

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 24-BOR-1240

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,

Lori Woodward, J.D.  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Peter VanKleeck, WV DoHS, BFA

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

██████████,

**Appellant,**

v.

**ACTION NO.: 24-BOR-1240**

**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 March 6, 2024, on an appeal filed January 26, 2024.

The matter before the Hearing Officer arises from the Respondent's January 19, 2024 decision to close the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits for failure to comply with Able-Bodied Adult Without Dependents (ABAWD) work requirements.

At the hearing, the Respondent appeared by Peter VanKleeck, Family Support Supervisor. The Appellant appeared *pro se*. The witnesses were placed under oath and the following documents were admitted into evidence:

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 Disability/Incapacity Medical Assessment form (DFA-DIMA-1), blank
- D-3 November 13, 2023 SNAP approval notice
- D-4 November 13, 2023 SNAP Work Rules notice (CWN-1)
- D-5 January 19, 2024 SNAP closure notice (EDC1)
- D-6 WV Income Maintenance Manual, Chapter 3, §§3.2.1.D.2 – 3.2.1.D.8

**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 SNAP benefits on October 11, 2023. (Exhibit D-1)
- 2) The Appellant is an ABAWD who must meet work requirements or an exemption to continue receiving SNAP benefits.
- 3) During the November 9, 2023, SNAP telephone interview, the Appellant indicated that he was exempt from ABAWD requirements due to his disability. (Exhibit D-1)
- 4) A Disability/Incapacity Medical Assessment Form (DFA-DIMA-1) was sent to the Appellant to be completed. (Exhibits D-1 and D-2)
- 5) On November 13, 2023, the Appellant's SNAP benefits were approved and prorated to November 1, 2023 as it was determined he had received SNAP benefits from the state of Virginia in the month of October 2023. (Exhibit D-1)
- 6) The Appellant failed to return the DFA-DIMA-1.
- 7) The Appellant was eligible for SNAP assistance for three months in a three-year period without meeting the work requirements or an exemption.
- 8) On January 19, 2024, the Respondent sent notification of SNAP closure to the Appellant citing that he had received his first 3 months of SNAP without meeting the work requirement or being exempt. (Exhibit D-5)
- 9) It was determined by the Respondent's representative that the Appellant should have received February 2024 SNAP benefits as the month of November 2023 should not have been counted as a full month of SNAP for ABAWD policy purposes.
- 10) The Respondent's representative issued the Appellant his February 2024 SNAP benefit and reopened his benefit's case pending the outcome of this fair hearing as the fair hearing was requested in a timely manner.

### **APPLICABLE POLICY**

#### ***Able-Bodied Adults Without Dependents (ABAWD) Policy:***

**Code of Federal Regulations, 7 CFR 273.24(b)**, in pertinent part:

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

...

(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](#)).

...

(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.

**WV IMM, Chapter 3, §3.2.1.D.1**, defines an Able-Bodied Adult Without Dependents (ABAWD) as a population of individuals who are age 18 or older, but not yet age 53. An individual who turns 18 becomes an ABAWD in the month following their birthday. An individual is no longer an ABAWD in the month of their 53rd Birthday.

**WV IMM Chapter 3, §3.2.1.D.1.a**, states:

- 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.

**WV IMM Chapter 3, §3.2.1.D.2**, states that for SNAP AGs, 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.

**WV IMM Chapter 3, §3.2.1.D.4**, states in pertinent parts, that an individual is exempt if he:

- 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.** [Emphasis added]
- ...
- Is certified as physically or mentally unfit for employment according to the provisions in Section 13.15.

**WV IMM Chapter 13, §13.15, ESTABLISHING DISABILITY AND FITNESS FOR EMPLOYMENT FOR THE SNAP PROGRAM:**

**WV IMM Chapter 13, §13.15.1, INTRODUCTION:** Disabled means the individual is unfit to engage in full-time employment due to a physical and/or mental disability. There are several different SNAP policies that require a determination of physical and/or mental disability. The policies that require a disability determination are listed below, followed by a citation.

- Medical deduction provision in Section 4.4.
- Asset policy in Section 5.4.
- 24-month certification policy for elderly and/or disabled adults in Section 1.4.
- Elderly or Disabled provision for removal of the shelter/utility cap in Section 4.4.
- Elderly or Disabled provision for use of net income test in Section 4.4.
- Group Living Facility (GLF) policy in Section 3.2.
- Elderly and disabled separate assistance group (AG) provision. See Section 3.2 for establishing disability.

**WV IMM Chapter 13, §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

**WV IMM Chapter 3, §3.2.1.D.7**, explains that an individual whose benefits are denied or terminated under the ABAWD policy can become eligible again when:

- He no longer meets the definition of an ABAWD;
- He is currently meeting the ABAWD work requirement; or
- He becomes exempt as specified above. Individuals who regain eligibility by meeting one of the standards above must maintain eligibility monthly by continuing to meet those standards.

**WV IMM Chapter 3, §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 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.

**Mid-Month Job Loss Example:** An ABAWD who works 25 hours per week loses his job the second week of February. February is not counted toward his three month limit.

**Prorated Allotment Example:** An ABAWD applies on January 15 and is approved for a prorated allotment. January is not counted towards his three month limit.

## **DISCUSSION**

The Able-Bodied Adult Without Dependents (ABAWD) work requirements policy for SNAP recipients became effective in all West Virginia counties on July 1, 2023. Individuals who meet the definition of ABAWD, who are not otherwise exempt, are required to meet the work requirement. The Respondent contends that the Appellant failed to comply with the ABAWD work requirements or was otherwise exempt after receipt of three months of SNAP benefits and therefore his SNAP benefits should be terminated.

During the Appellant’s SNAP telephone interview on November 9, 2023, the Appellant stated to the worker that he was disabled. The Respondent’s worker issued a DFA-DIMA-1 for a physician to complete in order to determine if the Appellant met the ABAWD exemption. However, the Appellant failed to return the form. On January 19, 2024, the Respondent issued notification of

SNAP benefit closure after January 31, 2024 to the Appellant, due to his failure to meet an ABAWD work requirement of exemption.

The Appellant testified that he believed he fulfilled the work requirements policy for SNAP by registering for WorkForce West Virginia (WorkForce). The Respondent's representative, Peter VanKleeck, confirmed that the Appellant did register with WorkForce on November 29, 2023. However, Mr. VanKleeck explained that the Appellant also needed to meet ABAWD policy requirements or an exemption in order to continue receiving SNAP benefits.

The Appellant testified that he did not complete the DFA-DIMA-1 form because he had difficulty finding a physician that would do so. Policy allows the form to be completed by a doctor, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, or a licensed or certified psychologist. Once the form is completed and submitted to the Respondent, then a determination can be made as to whether the Appellant meets the ABAWD policy exemption.

It should be noted that Mr. VanKleeck determined that the Appellant's SNAP benefits should not have been terminated after his January 2024 SNAP allotment. Mr. VanKleeck testified that because the Appellant was awarded with prorated November benefits (albeit it was actually prorated to November 1, 2023), those benefits should not have been counted in the three-month limit set by ABAWD policy. Therefore, Mr. VanKleeck issued the Appellant his February 2024 SNAP benefits, which would be his third month allowed by policy. Additionally, the Appellant's SNAP benefits were reopened pending the outcome of this hearing as the Appellant timely requested a hearing.

The Respondent showed by a preponderance of evidence that the Appellant had not met ABAWD work requirements or an exemption to extend his SNAP benefits beyond the three-month limit established by policy. Therefore, the Respondent's decision to terminate the Appellant's SNAP benefits is affirmed.

### **CONCLUSIONS OF LAW**

- 1) Policy requires that all SNAP recipients between the ages of 18 and 52 years of age are subject to the Able Bodied Adults Without Dependents (ABAWD) work requirements unless otherwise exempt.
- 2) The Appellant was required to meet the ABAWD work requirement or provide verification of his exemption.
- 3) The Appellant did not meet ABAWD work requirements.
- 4) The Appellant failed to return the DFA-DIMA-1 for ABAWD exemption determination.
- 5) The Appellant received three full months of SNAP benefits without meeting work requirements or an exemption.



- 6) The Respondent must terminate the Appellant's SNAP benefits.

**DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to terminate the Appellant's SNAP benefits.

**ENTERED this 6<sup>th</sup> day of March 2024.**

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Lori Woodward, Certified State Hearing Officer