



April 10, 2024



RE: [REDACTED] v. WVDoHS
ACTION NO.: 24-BOR-1303

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Carla Marsh, DoHS
Karen Kerns, authorized representative

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

████████████████████,

Appellant,

v.

Action Number: 24-BOR-1303

**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 West Virginia Office of Inspector General Common Chapters Manual. This fair hearing was convened on April 9, 2024.

The matter before the Hearing Officer arises from the Respondent's termination of Supplemental Nutrition Assistance Program (SNAP) benefits as outlined in a notice dated January 17, 2024.

At the hearing, the Respondent appeared by Carla Marsh, Economic Service Worker Senior, WVDoHS. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 SNAP Work Rules notice dated October 4, 2023
- D-2 ABAWDs 36 Month Tracking information
- D-3 Notice of Decision dated January 17, 2024
- D-4 West Virginia Income Maintenance Manual Chapter 3.2.1.D
- D-5 Information from ██████████ Housing Authority and West Virginia ██████████
██████████ Center Certificate
- D-6 Case Comments from Respondent's computer system

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, age 49, is a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits.
- 2) The Appellant is considered an Able-Bodied Adult Without Dependents (ABAWD) for SNAP purposes.
- 3) As an ABAWD, the Appellant is required to work or be enrolled in an approved work program for at least 20 hours per week or 80 hours per month unless she meets an exemption (Exhibit D-4).
- 4) The Respondent sent the Appellant a Notice of Decision on January 17, 2024, indicating that SNAP benefits would stop effective February 2024 because she had received SNAP benefits for the first three-month period without meeting a work requirement or an exemption (Exhibit D-3).
- 5) The Respondent first determined that the Appellant had not met work requirements for the months of November 2023, December 2023, and January 2024.
- 6) The Respondent later determined that the Appellant had met ABAWD work mandates for the month of December 2023 because she had participated in training at the West Virginia [REDACTED] Center and met hourly requirements (Exhibit D-5).
- 7) The [REDACTED] Center program ran from November 20, 2023, to January 5, 2024 (Exhibit D-5).
- 8) The Appellant received a [REDACTED] Certification on January 5, 2024 (Exhibit D-5).
- 9) The Department revised its decision and determined that the Appellant did not meet ABAWD work requirements for November 2023, January 2024, and February 2024, and that her SNAP benefits should be terminated effective March 2024.
- 10) The Appellant has been participating in the [REDACTED] Program for recovering drug addicts since March 2024.

APPLICABLE POLICY

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

Able-Bodied Adults Without Dependents (ABAWD) Policy

(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.

West Virginia Income Maintenance Manual Chapter 3.2.1.D.1 defines an Able-Bodied Adult Without Dependents (ABAWD) as an individual who is age 18 or older, but not yet age 53. An individual who turns 18 becomes an ABAWD in the month following his or her birthday. An individual is no longer an ABAWD in the month of his or her 53rd birthday.

West Virginia Income Maintenance Manual Chapter 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.

West Virginia Income Maintenance Manual Chapter 3.2.1.D.2 states that for SNAP Assistance Groups (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.

West Virginia Income Maintenance Manual Chapter 3.2.1.D.3 states that the ABAWD work requirement is met by either:

- Working at least 20 hours per week or 80 hours per 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;
- Participating in a SNAP E&T program for the required number of hours. Individuals who do not meet an exemption listed below and who are not participating in another program or working 20 hours per week or 80 hours in a month should be asked if they would like to be referred to the SNAP E&T program.

West Virginia Income Maintenance Manual Chapter 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.

West Virginia Income Maintenance Manual Chapter 3.2.1.D.6, states:

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.

West Virginia Income Maintenance Manual Chapter 3.2.1.D.4 states that SNAP benefits received while exempt from ABAWD work requirements do not count toward the three-month limit. An individual can meet an exemption if he or she is a regular participant in a drug addiction or alcoholic treatment and rehabilitation program when participation in the program would prevent the individual from meeting the work requirement or participating in an employment/training program for 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.

DISCUSSION

Policy states that SNAP recipients who have been identified as ABAWDs must work or participate in an approved work or training program for at least 20 hours per week or 80 hours per month. When circumstances change so that an ABAWD who has been meeting the requirement is no longer meeting the requirement, the first full countable month of the three-month ABAWD limit would be the month of benefits after the exemption ends. Certain participants in drug addiction or alcohol treatment and rehabilitation programs may be exempt from work requirements.

The Appellant testified that she is a recovering addict and has been participating in the [REDACTED] Program since March 2024.

The Respondent's representative testified that the Appellant did not meet work requirements in November 2023, January 2024, or February 2024. The Appellant met work requirements in December 2023 based on her training hours at the [REDACTED] Center. Evidence reveals that the Appellant was enrolled in classes at the [REDACTED] Center from November 20, 2023, through January 5, 2024. As the Appellant's circumstances changed (the class ended) and she was no longer meeting the work requirement as of January 5, 2024, the month of January 2024 should not count as a month of the ABAWD three-month limit.

The Appellant did not meet work requirements in November 2023 and February 2024; however, she was enrolled in a drug addiction recovery and/or rehabilitation program starting in March 2024. Based on information provided during the hearing, it is unclear whether participation in the recovery program would have met ABAWD exemption requirements for March 2024 or whether March 2024 would have qualified as the third month of countable ABAWD eligibility. Regardless, the Appellant would have been eligible for SNAP benefits in March 2024. It cannot be determined whether the Appellant's participation in the [REDACTED] Program meets a work exemption for April 2024 and ongoing months.

The Respondent's decision to terminate SNAP benefits effective March 2024 cannot be affirmed.

CONCLUSIONS OF LAW

- 1) The Appellant did not meet ABAWD work requirements in November 2023 and February 2024.

- 2) The Appellant was enrolled in a [REDACTED] Center training program through January 5, 2024.
- 3) The month of January 2024 should not have counted toward the three-month ABAWD eligibility limit.
- 4) The Appellant began participating in the [REDACTED] addiction recovery and/or rehabilitation program in March 2024.
- 5) Based on the Appellant's participation in the [REDACTED] Program, it is unclear whether March 2024 should have counted toward her three-month ABAWD eligibility limit or whether she met an exemption from ABAWD work requirements for March 2024.
- 6) The Respondent must determine whether March 2024 would have counted as the third month of the ABAWD three-month eligibility limit and whether the Appellant's participation in the program would meet an ongoing work exemption.
- 7) The Respondent's decision to terminate SNAP benefits effective March 2024 cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's action to terminate the Appellant's SNAP benefits effective March 2024. The case is **REMANDED** to the Respondent to determine whether the Appellant's participation in the [REDACTED] Program meets an ABAWD exemption for March 2024 and ongoing months.

ENTERED this 10th day of April 2024.

**Pamela L. Hinzman
State Hearing Officer**