



April 12, 2024

[REDACTED]

Re: [REDACTED] v WV DoHS
ACTION NO.: 24-BOR-1415

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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

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

cc: Rebecca Skeens, WV DoHS, [REDACTED]

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

IN THE MATTER OF:

██████████,

Appellant,

v.

ACTION NO.: 24-BOR-1415

**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 14, 2024, on an appeal filed February 13, 2024.

The matter before the Hearing Officer arises from the February 06, 2024 determination by the Respondent to terminate the Supplemental Nutrition Assistance Program (SNAP) benefits of a member of the Appellant's Assistance Group (AG), resulting in a reduction of SNAP benefits.

At the hearing, the Respondent appeared by Rebecca Skeens, Department of Human Services (DoHS). The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia (WV) People's Access to Help (PATH) eligibility system printout of Case Comments, dated September 05, 2023 through January 26, 2024
- D-2 WV PATH eligibility system printout of Case Comments, dated January 31, 2024 through February 20, 2024
- D-3 WV DoHS Notice of Decision, dated February 06, 2024
- D-4 WV PATH eligibility system printout of School Enrollment for ██████████, effective March 2022 through February 2023
- D-5 WV PATH eligibility system printout of School Enrollment for ██████████, effective January 2024 through February 2024

- D-6 WV PATH eligibility system printout of Case Comments, dated February 22, 2024 through February 27, 2024
- D-7 West Virginia Income Maintenance Manual (WVIMM) § 18.19.3.K
- D-8 WVIMM §§ 3.2.1.E.2 through 3.2.1.E.4
- D-9 WVIMM §§ 3.2.1.E through 3.2.1.E.1

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 was a recipient of SNAP benefits for a two (2) person Assistance Group (AG). (Exhibit D-3)
- 2) On January 26, 2024, while working in the Appellant's case, the Respondent discovered that the Appellant's adult son, [REDACTED] had been mistakenly registered in the WV PATH eligibility system as a Workforce Innovation and Opportunity Act (WIOA) student. (Exhibit D-4)
- 3) On February 05, 2024, after speaking with the Appellant, the Appellant's adult son, [REDACTED] was excluded from the SNAP AG as an ineligible college student. (Exhibits D-2 through D-6)
- 4) On February 06, 2024, the Respondent issued a notice of decision informing the Appellant that effective March 01, 2024, her SNAP benefits would decrease due to a member of the AG being an ineligible student. (Exhibit D-3)
- 5) The Appellant's adult son is a student enrolled full-time at an institution of higher education. (Exhibits D-4 and D-5)
- 6) The Appellant did not verify or report any potential exemptions to student policy for her adult son, [REDACTED] (Exhibit D-5)
- 7) The Appellant contested the Respondent's decision and on February 13, 2024, requested a Fair Hearing.

APPLICABLE POLICY

The Code of Federal Regulations, 7 CFR § 273.5, provides, in part:

§ 273.5 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)

West Virginia Income Maintenance Manual (WVIMM) § 3.2.2 provides, in part:

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.

WVIMM § 3.2.1.E.2 provides, in part:

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
 - The 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.

DISCUSSION

The Appellant was a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits for a two (2) person Assistance Group (AG). On January 26, 2024, while working in the Appellant's case, the Respondent discovered that the Appellant's adult son, [REDACTED] had been mistakenly registered in the WV PATH eligibility system as a Workforce Innovation and Opportunity Act (WIOA) student. On February 05, 2024, after speaking with the Appellant, the Respondent updated the case, and the Appellant's son was excluded from the SNAP AG as an ineligible college student. On February 06, 2024, the Respondent issued a notice of decision informing the Appellant that effective March 01, 2024, her SNAP benefits would decrease due to a member of the AG being an ineligible student. The Appellant contested the Respondent's decision and on February 13, 2024, requested a Fair Hearing. The Respondent bears the burden of proof to establish that action taken against the Appellant was in accordance with policy. The Respondent had to prove by a preponderance of the evidence that the Appellant's son was excluded from the SNAP AG correctly.

The Department's representative testified that it was a matter of Federal and agency policy to remove full-time college students from SNAP AGs unless they meet certain exemptions. She testified that, unless the student has a qualifying exemption, it is a policy requirement that the student be ineligible for SNAP purposes. The Appellant did not contest that her son met the policy definition of a student. In fact, during the hearing, the Appellant testified to the contrary when she stated that her son is a student enrolled full-time at [REDACTED]. However, the Appellant testified that she could not understand how the Respondent erred in registering her son in the eligibility system as a WIOA student, and more so how it persisted, unnoticed, even after multiple reviews. She questioned why, on several occasions during her review(s), was she asked about the AG's Expected Family Contribution (EFC), if the Department did not have her son registered correctly. The Appellant argued that, because her son is attending [REDACTED] and is enrolled in a "high demand" career field of study, her son should meet the Respondent's eligibility guidelines, since a "high demand" career field of study is listed as a potential exemption.

When reviewing the evidence, there was no dispute of the fact that the Appellant's son is a student of an institution of higher education, as defined by SNAP policy. However, the Appellant did argue that her son met an exemption to the student policy. When questioned, the Appellant could

not provide any documentation or recall where she read that a “high demand” career field of study was a potential exemption other than “on the internet.” There is no evidence to indicate that the Appellant’s information is correct. When reviewing the Respondent’s policy, it is the belief of this Hearing Officer that the Appellant has mistaken the policies for other Departmental programs (such as SNAP E&T, WIOA, etc.) as that pertaining to her AG. While the Appellant’s situation is unfortunate, it is the policy under which the Department must administer the program. Since the Appellant’s son did not meet an exemption to the SNAP college student policy, the Department acted correctly to remove the Appellant’s son from the SNAP AG as an ineligible college student.

CONCLUSIONS OF LAW

- 1) A student enrolled at an institution of higher education is ineligible to participate in SNAP unless the individual qualifies for an exemption.
- 2) The preponderance of evidence verified the Appellant was enrolled full-time at an institution of higher education.
- 3) The preponderance of evidence verified that the Appellant failed to meet a student policy exemption.
- 4) The Respondent correctly excluded the Appellant from the SNAP AG, beginning March 01, 2024.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent’s decision to exclude the Appellant from the SNAP AG, beginning March 01, 2024.

ENTERED this 12th day of April 2024.

Angela D. Signore
State Hearing Officer