



May 2, 2024

[REDACTED]

RE: [REDACTED] v. WV DOHS
ACTION NO.: 24-BOR-1642

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,

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

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

cc: Whitney O'Dell, [REDACTED] DoHS

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

████████████████████,

Appellant,

v.

Action Number: 24-BOR-1642

**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 April 9, 2024.

The matter before the Hearing Officer arises from the Respondent's October 11, 2023 decision to remove Supplemental Nutrition Assistance Program benefits from the Appellant's EBT account.

At the hearing, the Respondent appeared by Hayley Cosner, ██████████ Department of Human Services (DoHS). The Appellant appeared and represented himself. Both witnesses were placed under oath and the following records were admitted into evidence:

Department's Exhibits:

None

Appellant's Exhibits:

- A-1 Notice, dated October 11, 2023
- A-2 ebtEDGE EBT transactions for Card ██████████ printout
November 3, 2022 through February 8, 2023
- A-3 ebtEDGE EBT benefit status
Date available, September 2022 through January 2024
- A-4 Notice, dated August 23, 2023
- A-5 Notice, dated August 25, 2023
- A-6 SNAP EBT Transaction Charts
- A-7 SNAP EBT Transaction Charts

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 SNAP recipient and had SNAP benefits deposited into his EBT cardholder's account (Exhibit A-2).
- 2) On October 11, 2023, the Respondent issued a notice to the Appellant's address of record advising him that SNAP benefits were removed from his EBT account because they had not been used for 274 days (Exhibit A-1).
- 3) The October 11, 2023 notice does not provide the date the unused SNAP benefits were issued to the Appellant (Exhibit A-1).
- 4) The October 11, 2023 notice does not provide an amount of SNAP benefits expunged (Exhibit A-1).
- 5) The October 11, 2023 notice does not specify the removal date for the unused SNAP benefit allotment (Exhibit A-1).
- 6) 274 days before October 11, 2023, was January 10, 2023 (Exhibit A-1).
- 7) The Respondent's October 11, 2023 action was based on West Virginia Income Maintenance Manual (WVIMM) sections §§ 11.2.6 and 10.3.3 (Exhibit A-1).
- 8) On December 3, 2022, \$131 was added to the Appellant's SNAP balance (Exhibits A-2 and A-3).
- 9) On December 29, 2022, the Appellant's SNAP balance was \$1,839.99 (Exhibit A-2).
- 10) On January 3, 2023, \$131 was added to the Appellant's EBT balance (Exhibits A-2 and A-3). The Appellant's balance was \$1,970.99 (Exhibit A-2).
- 11) On January 5, 2023, \$150 was added to the Appellant's EBT balance. The Appellant's balance was \$2,120.99 (Exhibit A-2).
- 12) On January 5, 2023, the Appellant made a transaction for \$114.63 at [REDACTED] Exhibit A-2). The Appellant's remaining balance was \$2,006.36 (Exhibit A-2).
- 13) On February 1, 2023, the Appellant made a transaction for \$220.45 at [REDACTED] The Appellant's remaining balance was \$1,785.91 (Exhibit A-2).

- 14) On February 3, 2023, \$131 was added to the Appellant's EBT balance. The Appellant's balance was \$1,916.91 (Exhibit A-2).
- 15) On February 8, 2023, \$150 was added to the Appellant's EBT balance. The Appellant's balance was \$2,066.91 (Exhibit A-2).
- 16) The Appellant's February 8, 2023 ending SNAP balance was \$2,066.91 (Exhibit A-2).
- 17) September 30, 2023 was the last date the Appellant used SNAP benefits initially made available to him on January 3, 2023 (Exhibit A-3).
- 18) August 17, 2023 was the last date the Appellant used SNAP benefits made available on December 3, 2022 (Exhibit A-3).
- 19) November 14, 2023 was the last date the Appellant used SNAP benefits made available on March 3, 2023 (Exhibit A-3).
- 20) December 8, 2023 was the last date the Appellant used SNAP benefits made available on April 3, 2023 (Exhibit A-3).
- 21) On August 23 and 25, 2023, the Respondent issued a notice advising the Appellant that she had "...not used benefits from her SNAP EBT account for 229 days from the date they were issued" (Exhibits A-4 and A-5).
- 22) The August 23 and 25, 2023 notices advised the Appellant that he must use all benefits within 274 days from the date of issuance to prevent their removal (Exhibits A-4 and A-5).
- 23) The Respondent's August 23 and 25, 2023 notices did not reveal the date upon which benefits were scheduled to be expunged (Exhibits A-4 and A-5).
- 24) On November 10, 2023, the Appellant had \$29.51 in SNAP benefits expire (Exhibit A-6).
- 25) On December 8, 2023, the Appellant had \$79.54 in SNAP benefits expire (Exhibit A-6).

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) § 10.3.3 *Benefit Level Expungement* provides in relevant sections:

Benefit refers to the procedural process of depositing SNAP benefits into an EBT cardholder's account.

Expungement is the removal of benefits from an EBT account.

The *Aging process* is based on a first in, first out basis, oldest to newest, which means that each grant month deposit has a separate aging cycle.

The issuance date will be the parameter that determines the aging of a benefit month.

Once a benefit month account has reached 274 days of non-use from the date of issuance for SNAP, the benefit is expunged ... Although an account has an expungement, there may be remaining benefit month amounts in the EBT account.

Expungement occurs based on the date of issuance and the time a monthly benefit was issued to the household. Once benefits have been expunged, the benefit aging and benefit expungement process will continue for the remaining benefit months on an account based on the date(s) the remaining months were issued.

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 SNAP AG advising they have not used benefits from the account that were issued 229 days before the date of the notice.

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 the SNAP benefits have been expunged and are no longer available. The notice will also advise they may have other benefit months remaining. The clients are also encouraged to use all monthly SNAP allotments within 274 days of receipt.

Code of Federal Regulations 7 CFR § 274.2(d) Ongoing Households provides in relevant sections:

State agencies shall establish an availability date for household access to their benefits and inform households of this date. All households shall be placed on an issuance schedule so that they receive their benefits on or about the same date each month. The date upon which a household receives its initial allotment after certification need not be the date the household must receive its subsequent allotments.

Code of Federal Regulations 7 CFR § 274.2(i) Expungement provides in relevant sections:

(1) State agencies shall apply SNAP transactions against a household's SNAP benefits on a first-in-first-out basis. As a result, the oldest SNAP benefits are used first. On a daily basis, the State agency shall expunge benefits from EBT accounts at the monthly benefit allotment level...

(i) *Inactive EBT accounts* ...

(A) When the oldest benefit allotment has not been accessed by the household for nine months, the State agency shall expunge benefits from the EBT

account ... as each benefit allotment ages to nine months since the date of issuance or since the last date of account activity, whichever date is later.

(B) The State agency shall not expunge any benefits from active accounts even if there are benefit allotments older than nine months. If at any time after the expungement process begins, the household initiates activity affecting the balance of the account, the State shall stop expunging benefits from the account and start the account aging process over again for the remaining benefits.

(2) Not later than 30 days before the benefit expungement is scheduled to begin, State agencies shall provide notice to the household that benefits in their EBT account are approaching expungement due to nonuse/inactivity. At a minimum, the notice shall include:

- (i) The date upon which benefits are scheduled to be expunged; and
- (ii) The steps necessary to prevent the expungement ...

DISCUSSION

On October 11, 2023, the Respondent issued a notice advising the Appellant SNAP benefits were expunged from his EBT account after 274 days of benefit non-use. The Appellant contested the Respondent's action and argued that the notices provided were insufficient for determining the issuance date or amount of the unused SNAP benefit allotment.

The Respondent's representative testified that she was unsure how benefits were removed upon expungement. The Respondent's representative testified that the Respondent does not keep a record of 229 and 274 days of unused benefits and that it was the responsibility of "another department." The Respondent did not produce a witness from the relevant department to explain the Respondent's action. The Respondent assumes the burden of proof and had the opportunity to present witnesses and records to support the basis of the agency's October 11, 2023 unused SNAP benefit expungement decision. The Respondent did not submit any exhibits or relevant policy sections as evidence. The Board of Review cannot judge the policy and may only determine — based on the relevant regulations, submitted records, and testimony — whether the Respondent properly applied the policy and regulations when expunging the Appellant's unused SNAP benefits.

DATE OF SNAP ISSUANCE AVAILABILITY

During the hearing, the Respondent's representative was asked to provide the date for the January 2023 issuance, and expungement, or clarify whether the November 2023 expungement was related to the January 2023 issuance. The Respondent's witness was unable to provide the specific SNAP benefit issuance date for the unused benefits referenced by the October 11, 2023 notice and testified that the referenced benefits would have been issued 274 days before the notice. January 10, 2023 would have fallen on or about 274 days before October 11, 2023. Later, the Respondent's representative testified that the Appellant's SNAP allotment was issued on January 4, 2023. This issuance date is inconsistent with records submitted by the Appellant that reveal that SNAP benefit allotments were available to him on January 3 and January 5, 2023. As the preponderance of

submitted evidence revealed the Appellant was issued SNAP benefits on January 3 and January 5, 2023, the relevant regulatory time frames used by this Hearing Officer are compared to these dates.

SNAP BENEFIT EXPUNGEMENT

The policy and regulations provide that SNAP benefits are spent in order of issuance. After supplying proper advanced notice of the proposed unused benefit removal, the Respondent may expunge unused SNAP benefits after nine months.

Unused SNAP Benefits

The evidence revealed the Appellant's SNAP balance was accumulating before January 2023 due to unused SNAP benefit allotment months rolling over to the next month's available EBT balance.

The evidence revealed that the Appellant's December 3, 2022 SNAP benefits were last used on August 17, 2023. SNAP transactions made by the Appellant in September 2023 were deducted from the Appellant's January 3, 2023 SNAP issuance amount. Because SNAP benefits are used in order of issuance, the policy prevented the Appellant from spending his January 2023 SNAP benefit allotment before the previous month's allotment was spent.

The preponderance of the evidence failed to establish what amount of the January 2023 SNAP benefit allotments remained unused at the time of the Respondent's August and October 2023 notices.

229- Day Notice

While the federal policy requires notice to be issued 30 days before the proposed benefit removal, the agency's policy requires the Respondent to issue the advanced notice of proposed benefit removal 229 days after the date of issuance — 45 days before the proposed benefit expungement. The federal regulations require the advanced notice of proposed expungement to include the date on which benefits are scheduled to be expunged and the steps necessary to prevent the expungement.

The Respondent was required to issue a 229-day SNAP benefit non-use notice to the Appellant regarding his unused January 3, 2023 SNAP benefit allotment by August 20, 2023, 229 days after the issuance. The Respondent was required to issue a 229-day SNAP benefit non-use notice to the Appellant regarding his unused January 5, 2023 SNAP benefit allotment by August 22, 2023. The policy requires the notice to advise the client they have not used benefits from the account that were issued 229 days before the date of the notice, not on or about 229 days from the date of the notice. The Respondent's August 2023 notices would have been untimely related to either January 2023 issuance date and did not include the date on which the benefits were scheduled to be removed.

The August 2023 notices advised the Appellant that he must use all benefits within 274 days from the date of issuance but did not advise the Appellant the non-used benefits were issued 229 days before the date of the notice. The August 2023 notices did not provide any information to indicate that the Appellant should calculate 229 days from the date of the notice to determine the month or amount of SNAP benefit issuance that must be used or the date by which they must be used to

prevent removal. The preponderance of evidence failed to prove that the Respondent provided the Appellant with proper 229-day advanced notice of the proposed unused SNAP benefit removal.

During the hearing, the Respondent reviewed the agency's record and testified that the Appellant signed SNAP rights and responsibilities acknowledging his unused benefits would be removed. The Respondent's representative did not submit any exhibits to corroborate her testimony, establish the dates of the signatures, specify the form language, or establish that the Respondent met the regulatory requirement to notify the Appellant at 229 days of the impending expungement of SNAP benefits made available to the Appellant on January 3 and January 5, 2023.

Because the Respondent failed to issue proper notice at 229 days after the Appellant's January 3 and January 5, 2023 SNAP benefit allotment, the Respondent's October 11, 2023 decision to expunge the Appellant's unused January 2023 SNAP benefit allotment was incorrect. Proper advanced notice of the proposed expungement must be issued before the removal of the unused January 2023 benefits from the Appellant's EBT account may occur.

274 Day Notice

The Respondent was required to issue a 274-day SNAP benefit expungement notice informing the Appellant that his expired SNAP benefit issuance months were no longer available. The Respondent was required to issue a 274-day benefit removal notice to the Appellant by October 4, 2023 — 274 days after the January 3, 2023 SNAP benefit issuance. The Respondent was required to issue a 274-day benefit removal notice to the Appellant by October 6, 2023 — 273 days after the January 5, 2023, SNAP benefit issuance. Even if the Respondent had properly issued 229-day notices after the January 3 and 5, 2023 SNAP benefit disbursement, the Respondent's October 11, 2023 notice would have been untimely. Because the Respondent failed to issue a proper notice advising the Appellant of the proposed date of expungement, the matter will be remanded; therefore, the issue of the untimely October 11, 2023 274-day notice is moot.

CONCLUSIONS OF LAW

- 1) Once a benefit month account has reached 274 days of non-use from the date of issuance for SNAP, the benefit is expunged.
- 2) The SNAP benefit issuance date is the parameter that determines the aging of a SNAP benefit month.
- 3) The preponderance of submitted evidence revealed the Appellant was issued SNAP benefits on January 3 and January 5, 2023.
- 4) The Respondent must issue a notice advising the AG that SNAP benefits issued 229 days before the notice date remained unused and would be expunged from the AG's EBT account. The advanced notice of proposed unused SNAP benefit expungement must include the date of removal and the steps necessary to prevent the expungement.

- 5) The preponderance of evidence revealed that the Respondent failed to issue sufficient notice to the Appellant at 229 days of January 3 and January 5, 2023 SNAP allotment non-use.
- 6) As the Respondent failed to provide the Appellant with sufficient notice of benefit non-use at 229 days, the Respondent's decision to terminate the Appellant's SNAP benefits at 274 days of non-use was incorrect.
- 7) Before the Appellant's non-used January 2023 SNAP benefit allotment can be expunged, the Respondent must notify the Appellant — not later than 30 days before the benefit expungement is scheduled to begin — that benefits in his EBT account are approaching expungement due to nonuse/inactivity and include the date upon which benefits are scheduled to be expunged and the steps necessary to prevent the expungement.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's October 11, 2023 decision to expunge the unused portion of the Appellant's January 3, 2023 SNAP benefit allotment from the Appellant's EBT account. It is hereby **ORDERED** that any expunged January 2023 benefits be reinstated and the unused SNAP benefit aging process be reset at 229 days. The matter is **REMANDED** for the proper issuance of advanced notice of the proposed expungement of the January 3, 2023 SNAP benefit allotment.

ENTERED this 2nd day of May 2024.

Tara B. Thompson, MLS
State Hearing Officer