



December 4, 2024



RE: [REDACTED] v. WVDoHS
ACTION NO.: 24-BOR-3628

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,

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

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

cc: Carla Marsh, WVDoHS

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

[REDACTED]

Appellant,

v.

Action Number: 24-BOR-3628

**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 [REDACTED]. 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 December 3, 2024, upon a timely appeal filed on November 7, 2024.

The matter before the Hearing Officer arises from the Respondent's failure to issue Summer Electronic Benefit Transfer (SEBT) benefits to the Appellant for her foster child.

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

Department's Exhibits:

- D-1 Electronic mail transmissions between West Virginia Department of Human Services and West Virginia Department of Education
- D-2 West Virginia Income Maintenance Manual Chapter 20.5

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 the Summer Electronic Benefit Transfer (SEBT) Program.
- 2) The Respondent collaborates with the West Virginia Department of Education (WVDE) to administer the SEBT program.
- 3) No witnesses or representatives from WVDE were present for the fair hearing.
- 4) At the time of the Appellant's SEBT application, the Appellant's household included the Appellant, her husband, her 18-year-old son, one adopted child, and two foster children (including [REDACTED]).
- 5) The Appellant's SEBT application was approved on August 16, 2024; however, foster [REDACTED] was not included in the payments (Exhibit D-1).
- 6) WVDE believed [REDACTED] was eligible for SEBT direct certification (Exhibit D-1).
- 7) [REDACTED] was not receiving regular SNAP benefits at the time of the application and did not begin receiving them until October 2024 (Exhibit D-1).
- 8) [REDACTED] failed to receive SEBT benefits either by application or via the direct certification process.

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 20.5.1 provides regulations concerning the Summer EBT program:

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 20.5.5.B addresses the streamlined certification process for categorically eligible Summer EBT recipients. This section notes that children participating in foster care are considered categorically eligible for SEBT and are not required to complete an SEBT application.

Code of Federal Regulations 7 CFR Section 292.15 provides, in pertinent part:

§ 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 Section 292.16 provides, in pertinent part:

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

...

(f) *Restoration of lost benefits* —

(1) ***Entitlement.***

(i) The Summer EBT agency must restore benefits which were lost whenever the loss was caused by an error by the Summer EBT agency or by an administrative disqualification for intentional Program violation which was subsequently reversed, or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Furthermore, unless there is a statement elsewhere in this part that a household is entitled to lost benefits for a longer period, benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

(A) The date the Summer EBT agency receives a request for restoration from a household; or

(B) The date the Summer EBT agency is notified or otherwise discovers that a loss to a household has occurred.

(ii) The Summer EBT agency must restore benefits which were found by any judicial action to have been wrongfully withheld. If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits must be restored for a period of not more than twelve months from the date the court action was initiated. When the judicial action is a review of a Summer EBT agency action, the benefits must be restored for a period of not more than twelve months from the first of the following dates:

(A) The date the Summer EBT agency receives a request for restoration.

(B) If no request for restoration is received, the date the fair hearing action was initiated; but

(C) Never more than one year from when the Summer EBT agency is notified of, or discovers, the loss.

(D) Benefits must be restored even if the child is currently ineligible.

Code of Federal Regulations 7 CFR Section 292.26 provides, in pertinent part:

§ 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 West Virginia Income Maintenance Manual addresses the streamlined certification process for categorically eligible Summer EBT recipients. Policy specifies that children participating in foster care are considered categorically eligible for SEBT and are not required to complete an SEBT application. Federal regulations require the State to provide a household with retroactive benefits for Summer EBT if a fair hearing determines that the Summer EBT agency erroneously failed to issue such benefits in the correct amount to an eligible family,

The Appellant requested a fair hearing to appeal inaction on her application for SEBT for her foster [REDACTED]. The Appellant received SEBT benefits for other children in her household; however, foster [REDACTED] was omitted from SEBT payments.

As a foster [REDACTED], was categorically eligible for SEBT and the Respondent erred in failing to issue SEBT benefits for the child to the Appellant. In accordance with federal regulations, the Respondent must provide the Appellant with retroactive SEBT benefits for [REDACTED].

CONCLUSIONS OF LAW

- 1) The Appellant applied for SEBT benefits for her foster [REDACTED]
- 2) [REDACTED] was categorically eligible for SEBT benefits and was not required to complete an application.
- 3) The Respondent failed to issue SEBT benefits to the Appellant for [REDACTED]
- 4) The Respondent must take corrective action to issue retroactive SEBT benefits to the Appellant for [REDACTED]

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's non-issuance of SEBT benefits to the Appellant for her foster [REDACTED]

ENTERED this 4th day of December 2024.

Pamela L. Hinzman
State Hearing Officer