

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SENATE BILL 836
RATIFIED BILL**

**AN ACT TO RENAME THE FOOD STAMP PROGRAM TO REFLECT THE USE
OF ELECTRONIC BENEFIT TRANSFER CARDS.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-110(a) reads as rewritten:

"(a) Subject to the provisions of subsection (b) of this section with respect to prison inmates, any superior or district court judge or clerk of the superior court may authorize a person to sue as an indigent in their respective courts when the person makes affidavit that he or she is unable to advance the required court costs. The clerk of superior court shall authorize a person to sue as an indigent if the person makes the required affidavit and meets one or more of the following criteria:

- (1) ~~Receives food stamps.~~ Receives electronic food and nutrition benefits.
- (2) Receives Work First Family Assistance.
- (3) Receives Supplemental Security Income (SSI).
- (4) Is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons.
- (5) Is represented by private counsel working on the behalf of or under the auspices of a legal services organization under subdivision (4) of this section.
- (6) Repealed by Session Laws 2002-126, s. 29A.6(d), effective October 1, 2002.

A superior or district court judge or clerk of superior court may authorize a person who does not meet one or more of these criteria to sue as an indigent if the person is unable to advance the required court costs. The court to which the summons is returnable may dismiss the case and charge the court costs to the person suing as an indigent if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious."

SECTION 2. G.S. 105A-2(2)(c) reads as rewritten:

"c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the ~~Food Stamp~~ Food and Nutrition Services Program enabled by ~~Chapter 108A, Article 2, Part 5.~~ Part 5 of Article 2 of Chapter 108A of the General Statutes."

SECTION 3. G.S. 108A-25 reads as rewritten:

"(a) The following programs of public assistance are established, and shall be administered by the county department of social services or the Department of Health and Human Services under federal regulations or under rules adopted by the Social Services Commission and under the supervision of the Department of Human Resources:

- (1) Repealed by S.L. 1997-443, s. 12.3, effective August 28, 1997.
- (2) State-county special assistance for ~~adults;~~ adults.
- (3) ~~Food stamp program;~~ and Nutrition Services.
- (4) Foster care and adoption assistance ~~payments;~~ payments.
- (5) Low income energy assistance program."

SECTION 4. G.S. 108A-25.2 reads as rewritten:

"Individuals convicted of Class H or I controlled substance felony offenses in this State shall be eligible to participate in the Work First Program and ~~food stamp program~~ and the food and nutrition services program:

- (1) Six months after release from custody if no additional controlled substance felony offense is committed during that period and successful completion of or continuous active participation in a required substance abuse treatment program determined appropriate by the area mental health authority; or
- (2) If not committed to custody, six months after the date of conviction if no additional controlled substance felony offense is committed during that period and successful completion of or continuous active participation in a required substance abuse treatment program determined appropriate by the area mental health authority.

A county department of social services shall require individuals who are eligible for Work First Program assistance and ~~food stamp~~ electronic food and nutrition benefits pursuant to this section to undergo substance abuse treatment as a condition for receiving Work First Program or ~~food stamp~~ electronic food and nutrition benefits, if funds and programs are available and to the extent allowed by federal law."

SECTION 5. G.S. 108A-27.3(a)(10a) reads as rewritten:

"(10a) Ensure that all Work First cases are reviewed no later than three months prior to expiration of time limitations for receiving cash assistance to:

- a. Ensure that time limitations on assistance have been computed ~~correctly~~; correctly.
- b. Ensure that the family is informed in writing about public assistance benefits, including child care, Medicaid, and ~~food stamps~~ food and nutrition services, for which the family is eligible even while cash assistance is no longer ~~available~~; available.
- c. Provide for an extension of cash assistance benefits if the family qualifies for an ~~extension~~; and extension.
- d. Review family status and assist the family in identifying resources and support the family needs to maintain employment and family stability."

SECTION 6. G.S. 108-27.4(e)(7) reads as rewritten:

"(7) The process by which the county will review all Work First caseloads no later than three months prior to expiration of time limitations for receiving cash assistance to:

- a. Ensure that time limitations on assistance have been computed ~~correctly~~; correctly.
- b. Ensure that the family is informed in writing about public assistance benefits, including child care, Medicaid, and ~~food stamps~~ food and nutrition services, for which the family is eligible even while cash assistance is no longer ~~available~~; available.
- c. Provide for an extension of cash assistance benefits if the family qualifies for an ~~extension~~; and extension.
- d. Review family status and assist the family in identifying resources and support the family needs to maintain employment and family stability."

SECTION 7. G.S. 108A-27.6(a)(10) reads as rewritten:

"(10) Ensure that all Work First cases are reviewed no later than three months prior to expiration of time limitations for receiving cash assistance to:

- a. Ensure that time limitations on assistance have been computed ~~correctly;~~correctly.
- b. Ensure that the family is informed about public assistance benefits, including child care, Medicaid, and ~~food stamps~~food and nutrition services, for which the family is eligible even while cash assistance is no longer ~~available;~~available.
- c. Provide for an extension of cash assistance benefits if the family qualifies for an ~~extension;~~and extension.
- d. Review family status and assist the family in identifying resources and support the family needs to maintain employment and family stability."

SECTION 8. G.S.108A-29(k) reads as rewritten:

"(k) The FEIC shall not be counted as income when eligibility is determined for Work First Program assistance, Medicaid, ~~food stamps~~food and nutrition services, ~~subsidies~~, public housing, or Supplemental Security Income."

SECTION 9. The title of Part 5 of Article 2 of Chapter 108A of the General Statutes and G.S. 108A-51 reads as rewritten:

~~"Part 5. Food Stamp Program and Nutrition Services.~~

"§ 108A-51. Authorization for Food Stamp Program and Nutrition Services.

The Department is authorized to establish a statewide ~~food stamp and nutrition services~~food and nutrition services program as authorized by the Congress of the United States. The Department of Health and Human Services is designated as the State agency responsible for the supervision of ~~such programs;~~the food and nutrition services program. The boards of county commissioners through the county departments of social services are held responsible for the administration and operation of the ~~programs;~~food and nutrition services program."

SECTION 10. G.S. 108A-52 reads as rewritten:

"§ 108A-52. Determination of eligibility.

Any person who believes that he or another person is eligible to receive ~~food stamps~~electronic food and nutrition benefits may apply for such assistance to the county department of social services in the county in which the applicant resides. The application shall be made in such form and shall contain such information as the Social Services Commission may require. Upon receipt of an application for ~~food stamps~~electronic food and nutrition benefits, the county department of social services shall make a prompt evaluation or investigation of the facts alleged in the application in order to determine the applicant's eligibility for such assistance and to obtain such other information as the Department may require. Upon the completion of such investigation, the county department of social services shall, within a reasonable period of time, determine eligibility."

SECTION 11. G.S. 108A-53 reads as rewritten:

"§ 108A-53. Fraudulent misrepresentation.

(a) Any person, whether provider or recipient or person representing himself as such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any ~~food stamp~~electronic food and nutrition benefit or authorization cards to which that person is not entitled in the amount of four hundred dollars (\$400.00) or less shall be guilty of a Class 1 misdemeanor. Whoever knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any ~~food stamp~~electronic and nutrition benefit or authorization cards to which he is not entitled in an amount more than four hundred dollars (\$400.00) shall be guilty of a Class I felony.

(b) Whoever presents, or causes to be presented, ~~food stamps~~electronic food and nutrition benefits or ~~authorization cards~~ for payment or redemption, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Part or the regulations issued pursuant to this Part shall be guilty of a Class 1 misdemeanor.

(c) Whoever receives any ~~food stamps~~electronic food and nutrition benefits for any consumable item knowing that such ~~food stamps~~benefits were procured fraudulently under subsections (a) and/or (b) of this section shall be guilty of a Class 1 misdemeanor.

(d) Whoever receives any ~~food stamps~~electronic food and nutrition benefits for any consumable item whose exchange is prohibited by the United States Department of Agriculture shall be guilty of a Class 1 misdemeanor."

SECTION 12. G.S. 108A-53.1 reads as rewritten:

"§ 108A-53.1. Illegal possession or use of ~~food stamps~~electronic food and nutrition benefits.

(a) Any person who knowingly buys, sells, distributes, or possesses with the intent to sell, or distribute ~~food stamp coupons~~electronic food and nutrition benefits authorization cards, or access devices in any manner contrary to that authorized by this Part or the regulations issued pursuant thereto shall be guilty of a Class H felony.

(b) Any person who knowingly uses, transfers, acquires, alters, or possesses ~~food stamp coupons~~electronic food and nutrition benefits authorization cards, or access devices in any manner contrary to that authorized by this Part or the regulations issued pursuant thereto, other than as set forth in subsection (a) of this section, shall be guilty of a Class 1 misdemeanor if the value of such ~~food stamp coupons~~electronic food and nutrition benefits authorization cards, or access devices is less than one hundred dollars (\$100.00), or a Class A1 misdemeanor if the value of such ~~food stamp coupons~~electronic food and nutrition benefits authorization cards, or access devices is equal to at least one hundred dollars (\$100.00) but less than five hundred dollars (\$500.00), or a Class I felony if the value of such ~~food stamp coupons~~electronic food and nutrition benefits authorization cards, or access devices is equal to at least five hundred dollars (\$500.00) but less than one thousand dollars (\$1,000), or a Class H felony if the value of such ~~food stamp coupons~~electronic food and nutrition benefits authorization cards, or access devices equals or exceeds one thousand dollars (\$1,000)."

SECTION 13. G.S.108A-79 reads as rewritten:

"§ 108A-79. Appeals.

(a) A public assistance applicant or recipient shall have a right to appeal the decision of the county board of social services, county department of social services, or the board of county commissioners granting, denying, terminating, or modifying assistance, or the failure of the county board of social services or county department of social services to act within a reasonable time under the rules and regulations of the Social Services Commission or the Department. Each applicant or recipient shall be notified in writing of his right to appeal upon denial of his application for assistance and at the time of any subsequent action on his case.

(b) In cases involving termination or modification of assistance, no action shall become effective until 10 workdays after notice of this action and of the right to appeal is mailed or delivered by hand to the recipient; provided, however, termination or modification of assistance may be effective immediately upon the mailing or delivery of notice in the following circumstances:

- (1) When the modification is beneficial to the recipient; or
- (2) When federal regulations permit immediate termination or modification upon mailing or delivery of notice and the Social Services Commission or the Department of Health and Human Services promulgates regulations adopting said federal law or regulations. When federal and State regulations permit immediate termination or modification, the recipient shall have no right to

continued assistance at the present level pending a hearing, as would otherwise be provided by subsection (d) of this section.

(c) The notice of action and the right to appeal shall comply with all applicable federal and State law and regulations; provided, such notice shall, at a minimum contain a clear statement of:

- (1) The action which was or is to be taken;
- (2) The reasons for which this action was or is to be taken;
- (3) The regulations supporting this action;
- (4) The applicant's or recipient's right to both a local and State level hearing, or to a State level hearing in the case of the ~~food stamp program~~ food and nutrition services program, on the decision to take this action and the method for obtaining these hearings;
- (5) The right to be represented at the hearings by a personal representative, including an attorney obtained at the applicant's or recipient's expense;
- (6) In cases involving termination or modification of assistance, the recipient's right upon timely request to continue receiving assistance at the present level pending an appeal hearing and decision on that hearing.

An applicant or recipient may give notice of appeal by written or oral statement to the county department of social services, which shall record such notice by completing a form developed by the Department.

Such notice of appeal must be given within 60 days from the date of the action, or 90 days from the date of notification in the case of the ~~food stamp program~~ food and nutrition services program. Failure to give timely notice of appeal constitutes a waiver of the right to a hearing except that, for good cause shown, the county department of social services may permit an appeal notwithstanding the waiver. The waiver shall not affect the right to reapply for benefits.

(d) If there is such timely appeal in cases not involving disability, in the first instance the hearing shall consist of a local appeal hearing before the county director or a designated representative of the county director, provided whoever hears the local appeal shall not have been involved directly in the initial decision giving rise to the appeal. If there is such timely appeal in cases involving disability, the county director or a designated representative of the county director shall within five days of the request for an appeal forward the request to the Department of Health and Human Services, and the Department shall designate a hearing officer who shall promptly hold a hearing in the county according to the provisions of subsections (i) and (j) of this section. In cases involving termination or modification of assistance (other than cases of immediate termination or modification of assistance pursuant to subsection (b)(2) of this section), the recipient shall continue to receive assistance at the present level pending the decision at the initial hearing, whether that be the local appeal hearing decision or, in cases involving questions of disability, the Department of Health and Human Services hearing decision, provided that in order to continue receiving assistance pending the initial hearing decision the recipient must request a hearing on or before the effective date of the termination or modification of assistance.

(e) The local appeal hearing shall be held not more than five days after the request for it is received. The recipient may, for good cause shown as defined by rule or regulation of the Social Services Commission or the Department, petition the county department of social services, in writing, for a delay, but in no event shall the local appeal hearing be held more than 15 days after the receipt of the request for hearing. At the local appeal hearing:

- (1) The appellant and the county department may be represented by personal representatives, including attorneys, obtained at their expense.

- (2) The appellant or his personal representative and the county department shall present such sworn evidence and law or regulations as bear upon the case. The hearing need not be recorded or transcribed, but the director or his representative shall summarize in writing the substance of the hearing.
- (3) The appellant or his personal representative and the county department may cross-examine witnesses and present closing arguments summarizing their views of the case and the law.
- (4) Prior to and during the hearing, the appellant or his personal representative shall have adequate opportunity to examine the contents of his case file for the matter pending together with those portions of other public assistance or social services case files which pertain to the appeal, and all documents and records which the county department of social services intends to use at the hearing. Those portions of the public assistance or social services case file which do not pertain to the appeal or which are required by federal statutes or regulations or by State statutes or regulations to be held confidential shall not be released to the appellant or his personal representative. In cases where the appellant has been denied access to the public assistance or social services case file the hearing officer shall certify as part of the official record that the hearing officer has examined the case files and that no portion of those files pertain to the appeal. Such certification may be subject to judicial review as provided in subsection (k) of this section. Nothing in this section is intended to restrict an applicant or recipient access to information if that access is allowed by rules and regulations promulgated pursuant to G.S. 108A-80.

(f) The director or his designated representative shall make the decision based upon the evidence presented at the hearing and all applicable regulations, and shall prepare a written statement of his decision citing the regulations and evidence to support it. This written statement of the decision will be served by certified mail on the appellant within five days of the local appeal hearing. If the decision terminating or modifying the appellant's benefits is affirmed, the assistance shall be terminated or modified, not earlier than the date the decision is mailed, and any assistance received during the time of the appeal is subject to recovery.

(g) If the appellant is dissatisfied with the decision of the local appeal hearing, he may within 15 days of the mailing notification of the decision take a further appeal to the Department. However, assistance may not be received pending this further appeal. Failure to give timely notice of further appeal constitutes a waiver of the right to a hearing before an official of the Department except that, for good cause shown, the Department may issue an order permitting a review of the local appeal hearing notwithstanding the waiver. The waiver shall not affect the right to reapply for benefits.

(h) Subsections (d)-(g) of this section shall not apply to the ~~food stamp program~~ food and nutrition services program. The first appeal for a ~~food stamp~~ an electronic food and nutrition benefit recipient or his representative shall be to the Department. Pending hearing, the recipient's assistance shall be continued at the present level upon timely request.

(i) If there is an appeal from the local appeal hearing decision, or from a ~~food stamp~~ an electronic food and nutrition benefit recipient or his representative where there is no local hearing, or if there is an appeal of a case involving questions of disability the county director shall notify the Department according to its rules and regulations. The Department shall designate a hearing officer who shall promptly hold a de novo administrative hearing in the county after giving reasonable notice of the time and place of such hearing to the appellant and the county department of social services. Such hearing shall be conducted according to applicable federal law and regulations and

Article 3, Chapter 150B, of the General Statutes of North Carolina; provided the Department shall adopt rules and regulations to ensure the following:

- (1) Prior to and during the hearing, the appellant or his personal representative shall have adequate opportunity to examine his case file and all documents and records which the county department of social services intends to use at the hearing together with those portions of other public assistance or social services case files which pertain to the appeal. Those portions of the public assistance or social services case files which do not pertain to the appeal or which are required by federal statutes or regulations or by State statutes or regulations to be held confidential shall not be released to the appellant or his personal representative. In cases where the appellant has been denied access to portions of the public assistance or social services case file, the hearing officer shall certify as part of the official record that the hearing officer has examined the case files and that no portion of those files pertain to the appeal. Such certification may be subject to judicial review as provided in subsection (k) of this section. Nothing in this section is intended to restrict an applicant or recipient access to information if that access is allowed by rules or regulations promulgated pursuant to G.S. 108A-80.
 - (2) At the appeal hearing, the appellant and personnel of the county department of social services may present such sworn evidence, law and regulations as bear upon the case.
 - (3) The appellant and county department shall have the right to be represented by the person of his choice, including an attorney obtained at his own expense.
 - (4) The appellant and county department shall have the right to cross-examine the other party as well as make a closing argument summarizing his view of the case and the law.
 - (5) The appeal hearing shall be recorded; however, no transcript will be prepared unless a petition for judicial review is filed pursuant to subsection (k) herein, in which case, the transcript will be made a part of the official record. In the absence of the filing of a petition for a judicial review, the recording of the appeal hearing may be erased or otherwise destroyed 180 days after the final decision is mailed.
 - (6) Notwithstanding G.S. 150B-28 or any other provision of State law, discovery shall be no more extensive or formal than that required by federal law and regulations applicable to such hearings.
- (j) After the administrative hearing, the hearing officer shall prepare a proposal for decision, citing pertinent law, regulations, and evidence, which shall be served upon the appellant and the county department of social services or their personal representatives. The appellant and the county department of social services shall have the opportunity to present oral and written arguments in opposition to or in support of the proposal for decision to the designated official of the Department who is to make the final decision. The final decision shall be based on, conform to, and set forth in detail the relevant evidence, pertinent State and federal law and regulations, and matters officially noticed. The decision shall be rendered not more than 90 days, or 45 days in the case of the ~~food stamp program~~ food and nutrition services program, from the date of request for the hearing, unless the hearing was delayed at the request of the appellant. If the hearing was delayed at the appellant's request, the decision may only be delayed for the length of time the appellant requested a delay. The final decision shall be served upon the appellant and upon the county department of social services by certified mail, with a copy furnished to either party's attorney of record. In the absence of a petition for judicial review filed pursuant to subsection (k) herein, the final decision shall be binding

upon the appellant, the county department of social services, the county board of social services, and the board of county commissioners.

(k) Any applicant or recipient who is dissatisfied with the final decision of the Department may file, within 30 days of the receipt of notice of such decision, a petition for judicial review in superior court of the county from which the case arose. Failure to file a petition within the time stated shall operate as a waiver of the right of such party to review, except that, for good cause shown, a judge of the superior court resident in the district or holding court in the county from which the case arose may issue an order permitting a review of the agency decision under this Chapter notwithstanding such waiver. The hearing shall be conducted according to the provisions of Article 4, Chapter 150B, of the North Carolina General Statutes. The court shall, on request, examine the evidence excluded at the hearing under G.S. 108A-79(e)(4) or G.S. 108A-79(i)(1) and if the evidence was improperly excluded, the court shall consider it. Notwithstanding the foregoing provisions, the court may take testimony and examine into the facts of the case, including excluded evidence, to determine whether the final decision is in error under federal and State law, and under the rules and regulations of the Social Services Commission or the Department of Health and Human Services. Furthermore, the court shall set the matter for hearing within 15 days from the filing of the record under G.S. 150B-47 and after reasonable written notice to the Department of Health and Human Services and the applicant or recipient. Nothing in this subsection shall be construed to abrogate any rights that the county may have under Article 4 of Chapter 150B.

(l) In the event of conflict between federal law or regulations and State law or regulations, the federal law or regulations shall control."

SECTION 14. G.S. 113-351(d) reads as rewritten:

"(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver. – A county department of social services shall issue a Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver to an individual who receives benefits from Medicaid, ~~Food Stamps~~ Food and Nutrition Services, or Work First Family Assistance through the county department of social services and who requests a waiver. This waiver shall be issued at no charge. This waiver is valid for a period of one year from the date of issuance. This waiver shall be issued only to an individual who is a resident of the State. This waiver authorizes the waiver holder to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, except for public mountain trout waters, and to engage in recreational fishing in coastal fishing waters. County departments of social services shall supply the Wildlife Resources Commission with the name, mailing address, and telephone number of each individual who receives a waiver."

SECTION 15. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 14th day of
June, 2007.

Beverly E. Perdue
President of the Senate

Joe Hackney
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____m. this _____ day of _____, 2007