



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 10, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 4, 2006. Your hearing request was based on the Department of Health and Human Resources' action to terminate your Food Stamp and Medicaid benefits.

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 Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Food Stamp and Medicaid Programs is based on current policy and regulations. Some of these regulations state as follows: When no Assistance Group member is elderly or disabled, the gross income must be equal to or less than the gross income limit listed in Chapter 10, Appendix A (130% of the Federal Poverty Level) for the Assistance Group size to qualify for Food Stamps. Periodic reviews of eligibility for recipients are mandated by law and take place at specific intervals depending on the Program or coverage group. Failure by the client to complete a redetermination usually results in ineligibility. (West Virginia Income Maintenance Manual Sections 1.2 and 10.4C,1)

Based on information submitted at your hearing, your gross household income is excessive for the Food Stamp Program. In addition, evidence revealed that your Medicaid case closed due to failure to complete a redetermination and, upon reapplication, your child was correctly approved for the West Virginia Children's Health Insurance Program (WV CHIP).

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate your Food Stamp and Medicaid benefits.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Stephanie Rizzio, ESS, DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

_____,
Claimant,

**Action Number: 06-BOR-2278
06-BOR-2279**

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on August 10, 2006 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on August 4, 2006 on a timely appeal filed June 27, 2006.

It should be noted that benefits have not been continued pending the results of the hearing.

II. PROGRAM PURPOSE:

The program entitled Food Stamps is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The purpose of the Food Stamp Program is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

The Department provides Medicaid to Qualified Children born prior to the federal eligibility date of 10/01/83. This was mandated by the State Legislature and required a waiver from the federal regulations to implement. These children are Qualified Children in every way except their age. They are referred to as Medicaid Expansion cases because the approved waiver allowed the Department to expand Qualified Child Medicaid coverage to more children.

III. PARTICIPANTS:

_____, Claimant
_____, Claimant's boyfriend
Stephanie Rizzio, Economic Services Supervisor, DHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department took the correct action to terminate the Claimant's Food Stamp and Medicaid benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 1.2, 7.9, 7.10, 10 Appendix A, 10.4, 10.10 and 10.12

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Medicaid closure letter dated May 19, 2006
- D-2 West Virginia Income Maintenance Manual Chapter 1.2
- D-3 WV CHIP approval letter
- D-4 West Virginia Income Maintenance Manual Chapter 10, Appendix A
- D-5 West Virginia Income Maintenance Manual Chapters 7.9 and 7.10
- D-6 West Virginia Income Maintenance Manual Chapter 10.10
- D-7 West Virginia Income Maintenance Manual Chapter 10.12
- D-8 Income/employment information for _____
- D-9 Income/employment information for _____
- D-10 Food Stamp termination letter
- D-11 *No exhibit*
- D-12 West Virginia Income Maintenance Manual Chapter 10.4
- D-13 Food Stamp Gross Income Test

Claimant's Exhibits:

- C-1 Letter from _____ to Economic Service Worker Stephen Kimbrell
- C-2 Utility bills
- C-3 Pay stubs

VII. FINDINGS OF FACT:

- 1) Qualified Child Medicaid benefits for the Claimant's two-year-old daughter, _____, were terminated effective June 2006 due to the Claimant's failure to complete an eligibility redetermination in May 2006.
- 2) The Department sent the Claimant a Notice of Decision on May 19, 2006 (D-1), which states, in part:

Action: Your Qualified Child Medicaid is/are being closed. You will receive your last benefit in May 2006.

Reason: _____ did not complete an eligibility review on the date scheduled.

- 3) The Claimant's Food Stamp benefits were due for redetermination in June 2006. A redetermination was completed on June 13, 2006, at which time the Claimant's daughter was evaluated for medical coverage.
- 4) Ms. Rizzio testified that _____'s father, _____, is now residing in the household and the combined gross income of Ms. _____ and Mr. _____ totaled \$2,132.55 per month. That income is excessive for Medicaid eligibility, however, the child was approved for the West Virginia Children's Health Insurance Program (WV CHIP).
- 5) The Department sent a Notice of Decision (D-3) to the Claimant on June 23, 2006 which states, in part:

The following child has been approved for the West Virginia Children's Health Insurance Program: _____

An application was received in our office on 06/13/06. This child is eligible for benefits beginning 06/01/06.

- 6) The Claimant's Food Stamp benefits were terminated as a result of income calculated during the redetermination. Ms. Rizzio testified that gross household income must be below 130 percent of the Federal Poverty Level to qualify for Food Stamps (or \$1,744 for an Assistance Group of three) as listed in Chapter 10, Appendix A (D-4). Ms. Rizzio testified that the Department averaged Mr. _____'s pay stubs for March, April, May and June 2006 to arrive at an anticipated income. Ms. _____'s income, which fluctuates less, was calculated based on her pay stubs from the 30 days preceding the redetermination.
- 7) The Department sent the Claimant a Notice of Decision on June 23, 2006 (D-10) regarding the Food Stamp termination. The letter states, in part:

Action: Your Food Stamps will stop. You will not receive this benefit after June 2006.

Reason: Income is more than the gross income limit for you to receive benefits.

- 8) Ms. _____ testified about problems she has encountered in reporting information to the Department. She testified that about \$464 per month is deducted from Mr. _____'s income for child support payments and that, while both she and Mr. _____ are employed, their household expenses exceed their combined income. She stated that child support payments should be considered as a deduction since Mr. _____ does not actually bring home that portion of his income. Ms. _____ testified that the family is struggling financially and has received disconnection notices on several utility bills (C-2) since the Food Stamps were terminated. She stated that she had to take out a loan to meet expenses. In addition, Ms. _____ pointed out that Mr. _____ works in the _____ areas and most of his take-home income is spent on gasoline to travel to work. She stated that she would be unable to pay any out-of-pocket expenses associated with the WV CHIP Program.

Mr. _____ testified that he and Ms. _____ are attempting to be honest about their household circumstances, but that it seems dishonest people derive more benefit from assistance programs in West Virginia.

- 9) West Virginia Income Maintenance Manual Chapter 1.2 states:

Periodic reviews of total eligibility for recipients are mandated by law. These are redeterminations and take place at specific intervals, depending on the Program or coverage group. Failure by the client to complete a redetermination usually results in ineligibility. If the client completes the redetermination process by the specific program deadlines and remains eligible, benefits must be uninterrupted and received at approximately the same time.

- 10) West Virginia Income Maintenance Manual Chapter 7.9 (WV CHIP):

The income of the following individuals is used to determine the child's eligibility:

- The WV CHIP child
- The mother of the WV CHIP child, if living in the home with the child
- The legal father of the WV CHIP child, if living in the home with the child
- The legal spouse of the WV CHIP child, if living in the home with the child

This section indicates that, to determine eligibility, countable income is compared to 200 percent of the Federal Poverty Level based on the number of individuals in the Needs Group (including the WV CHIP child, the WV CHIP child's mother and legal father if living in the home, the WV CHIP child's legal spouse, the child of the WV CHIP child if living in the home, the WV CHIP child's blood-related or adopted siblings under age 19, the expected birth or births that is/are blood-related siblings of the child, the expected birth or births when the WV CHIP child is pregnant).

11) West Virginia Income Maintenance Manual Chapter 10.10 (Qualified Child Medicaid):

The Qualified Child (QC) coverage group provides Medicaid to Qualified Children only. However, the income of all members of the QC's income group, except that of siblings, is used to determine eligibility. In addition, members of the Needs Group, including the siblings, are included in determining the correct 100% FPL to use as the maximum income level.

This section indicates that the only disregards from earned income are the AFDC Standard Work Deduction (\$90) applied to the income of each working person and the AFDC Medicaid Dependent Care Deduction up to the maximum amounts allowable for AFDC Medicaid.

12) West Virginia Income Maintenance Manual Chapter 10.12 (Poverty-Level Child Medicaid) states that allowable income deductions include the AFDC Medicaid Standard Work Deduction (\$90) and the AFDC Medicaid Dependent Care Deduction. Countable income is compared to 133% of the Federal Poverty Level when a child is between the ages of one (1) and five (5).

13) West Virginia Income Maintenance Manual Chapter 10.4C, 1 (Food Stamps) states:

When at least one AG member is elderly or disabled as specified in Section 12.15, B, eligibility is determined by comparing the countable income to the maximum net monthly income found in Appendix A. There is no gross income test.

When no AG member is elderly or disabled, the gross income must be equal to or less than the gross income limit in Appendix A. If so, the AG qualifies for the disregards and deductions in Section 10.4, B. If the gross income exceeds the amount in Appendix A, the AG is ineligible.

14) West Virginia Income Maintenance Manual Chapter 10.4, A ,1 and 4 (Food Stamps):

Eligibility is determined and benefits are issued on a monthly basis. Therefore, it is necessary to determine a monthly amount of income to count for the eligibility period. The following information applies to earned and unearned income. For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the AG. For all cases, income is projected*; past income is used only when it reflects the income the client reasonably expects to receive.

1. Methods For Reasonably Anticipating Income

There are 2 methods for reasonably anticipating the income the client expects to receive. One method uses past income and the other method uses future income. Both methods may be used for the same AG for the same certification period because the method used varies with the circumstances of each source of income. The situations which prompt usage of one or the other method are listed below. More details are contained in the following items.

Use past income only when both of the following conditions exist for a source of income:

- Income from the source is expected to continue into the certification period; and
- The amount of income from the same source is expected to be more or less the same.

NOTE: For these purposes, the same source of earned income means income from the same employer, not just the continued receipt of earned income.

Use future income when either of the following conditions exists for a source of income:

- Income from a new source is expected to be received in the certification period; or
- The rate of pay or the number of hours worked for an old source is expected to change during the certification period.

Once the Worker determines all of the income sources which are to be considered for use, the amount of monthly income is determined as follows, based on the frequency of receipt and whether the amount is stable or fluctuates.

The section indicates that when an individual is paid more often than monthly, the worker should find the average amount for a period and convert it to a monthly amount. It states:

***NOTE:** The purpose of finding an average amount of fluctuating income is to even out the highs and lows in the

amount of income. The client is not, then, required to report fluctuating income each pay period and the Worker is not required to change income monthly. See Section 2.2,B for Food Stamp reporting requirements. Sometimes the client receives higher benefits than he would if actual income were used and sometimes he receives lower benefits. Therefore, when the Worker has averaged fluctuating income based on the best information available and the client's income does not match the monthly amount used by the Worker, there is no repayment when the client receives higher benefits and no supplemental issuance when the client receives lower benefits. Should the client report fluctuations in the amount of income, the Worker is only required to recalculate the countable income when, in his judgment, the fluctuation will significantly impact the coupon allotment. All changes reported by the client must be considered, but not necessarily used. Reported changes must be recorded and the Worker must record why the reported income was or was not used.

Conversion of income to a monthly amount is accomplished by multiplying an actual or average amount as follows:

- Weekly amount x 4.3
- Bi-weekly amount (every 2 weeks) x 2.15
- Semi-monthly (twice/month) x 2

Proration of income to determine a monthly amount is accomplished by dividing the amount received by the number of time periods it is intended to cover as follows:

- Bi-monthly amount (2 months) ÷ 2
- Quarterly amount (3 months) ÷ 3
- Semi-annual amount (twice/year) ÷ 6
- Annual amount ÷ 12
- 6-week amount ÷ 6 and converted to monthly amount by using x 4.3
- 8-week amount ÷ 8 and converted to monthly amount by using x 4.3

VIII. CONCLUSIONS OF LAW:

1. Testimony indicates that the Claimant failed to complete a redetermination of her child's Medicaid benefits in May 2006 and the Medicaid closed appropriately effective June 2006.
2. The Claimant completed a Food Stamp redetermination in June 2006 and her child was reevaluated for medical coverage at that time. Household income included the following:

Pay stubs for Mr. _____ – 3/9/06- \$541
3/23/06- \$382
4/6/06- \$498.75

4/20/06- \$507.63
5/4/06- \$585
5/18/06- \$658
6/1/06- \$653.20

(NOTE: Mr. _____'s pay information for 6/15/06 of \$785.44 was not used in determining average income.)

Average income for Mr. _____ is \$546.51 x bi-weekly multiplier of 2.15 = \$1,175 monthly.

Pay stubs for Ms. _____ - 5/23/06- \$441
6/6/06- \$449.75

Average income for Ms. _____ is \$445.37 x bi-weekly multiplier of 2.15 = \$957.55 monthly.

Total monthly household income is \$1,175 + \$957.55 = \$2,132.55.

3. The maximum household income for a family of three is \$1,384 (100% FPL) for Qualified Child Medicaid, while the maximum household income for a family of three is \$1,840 (133% FPL) for Poverty-Level Child Medicaid. Both parents are allowed the Standard Work Deduction (\$90 each) from their total monthly income (\$2,132.55- \$180=\$1,952.55). The WV CHIP approval letter lists the Claimant's monthly daycare expenses as \$59.13. Therefore, \$1,952.55- \$59.13 = \$1,893.42 total countable income for both Medicaid Programs. Because this countable income is excessive for Medicaid, the Department correctly approved WV CHIP coverage since the maximum income limit for that program is \$2,767 (200% FPL) for a three-person household.
4. For Food Stamp benefits, gross income (with no deductions) is considered when no Assistance Group members are elderly or disabled. Policy dictates that the maximum allowable gross income for a three-person benefit group is \$1,744. Since the Claimant's total gross household income is \$2,132.55, the Department took the correct action in terminating Food Stamp benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate the Claimant's Food Stamp and Medicaid benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of August, 2006.

**Pamela L. Hinzman
State Hearing Officer**