



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

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

December 5, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 27, 2012. Your hearing request was based on the Department of Health and Human Resources' action to deny your AFDC Medicaid application based on lack of a deprivation factor.

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 AFDC Medicaid Program is based on current policy and regulations. These regulations specify that when a child resides with one parent, the deprivation factor must be either death or continued absence of the other parent. Continued absence means that the parent is "physically absent from the home for any reason; and the nature of the absence is such as to interrupt or terminate the parent's functioning as provider of maintenance, physical care or guidance for the child; and the known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the child's present support or care." (West Virginia Income Maintenance Manual Chapter 15.2.C)

Information submitted at your hearing reveals that the deprivation factor of continued absence of your child's father has been established in regard to your AFDC Medicaid benefits.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in denying your application for AFDC Medicaid based on failure to establish a deprivation factor.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Tina Elza, WVDHHR

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

IN RE: ----,

Claimant,

v.

ACTION NO. : 12-BOR-2363

**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 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 via videoconference on November 27, 2012, on a timely appeal filed October 5, 2012.

II. PROGRAM PURPOSE:

The Aid to Families with Dependent Children (AFDC, AFDCU for unemployed parents) Medicaid Program is designed to provide medical assistance to eligible families with children to age 18. These dependent children must be deprived of parental support due to the death, continued absence, incapacity, or unemployment of the parents. In addition, the family must meet financial eligibility criteria.

III. PARTICIPANTS:

---, Claimant
Tina Elza, Economic Service Worker, WVDHHR
Cindy Bell, Economic Service Worker, WVDHHR

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its action to deny the Claimant's application for AFDC Medicaid based on failure to establish a deprivation factor.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 15.2.C

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated July 24, 2012
- D-2 West Virginia Income Maintenance Manual Chapter 15
- D-3 West Virginia Income Maintenance Manual Chapter 16
- D-4 Copy of Hearing/Grievance Request Notification
- D-5 Case Comments dated July 24, 2012
- D-6 Medicaid application received July 12, 2012

Claimant's Exhibits:

- C-1 Claimant's written statement

VII. FINDINGS OF FACT:

- 1) The Claimant applied for AFDC Medicaid in July 2012 (D-6) and the Department sent her a Notice of Decision on July 24, 2012 (D-1), informing her that her Medicaid application had been denied. This notice states, in pertinent part:

Your application for adult Medicaid dated 07/12/12 has been denied...

Here is why: For a parent or other caretaker relative to be eligible for AFDC/U Medicaid, the child must be deprived of parental support and care. Since the father of child has regular visitation with child there is no deprivation factor.

- 2) The Claimant had noted on her Medicaid application (D-6, Page 8 of 14) that her daughter's father, ---- ----, does not reside in the home and had been absent for 10 years. Tina Elza, Economic Service Worker with WVDHHR, cited Case Comments (D-5) dated July 24, 2012, which state that a worker spoke with the Claimant and the Claimant indicated that the child (----) "sees her father regularly." Ms. Elza stated that absence could not be established because the Claimant and Mr. ---- share "joint custody" of ----. However, the Department could provide no verification that a court-ordered joint custody agreement exists.

- 3) The Claimant testified that while Mr. ---- resides next door to her residence, ---- does not have regular visitation with him and there is no established visitation schedule. She stated that ---- does not see her father for days at a time and he does not voluntarily spend time with ---- unless she initiates it. The Claimant purported that ----, who is deaf, never stays with her father overnight because she feels like she “doesn’t fit in.” On occasion, Mr. ---- takes ---- to speech class; however he makes no attempt to communicate with her via sign language.

The Claimant also testified that ----’s father works out of town and is often gone for a week at a time. She contended that Mr. ---- plays video games on the occasions when --- does visit, and ---- ends up spending the time with her sister. The Claimant stated that Mr. ---- took two family vacations during the summer of 2012 with his other daughter and step-son, but did not include ----. She indicated that she receives child support from Mr. ----, as his wages are attached.

The Claimant testified that she suffers from multiple sclerosis and needs medical treatment so that she can continue caring for her daughter. She stated that she should see a neurologist on a regular basis, but has not seen one in over a year, and that she is aware of medications that could improve her quality of life.

- 4) West Virginia Income Maintenance Manual Chapter 15.2.C.1.b (C-2) states that, for AFDC and AFDC-Related Medicaid purposes, a child must be deprived of parental support and care. When a child resides with one parent, the deprivation factor must be either death or continued absence of the other parent.
- 5) West Virginia Income Maintenance Manual Chapter 15.2.C.2.b states that continued absence means that the parent is “physically absent from the home for any reason; and the nature of the absence is such as to interrupt or terminate the parent’s functioning as a provider of maintenance, physical care or guidance for the child; and the known or indefinite duration of the absence precludes counting on the parent’s performance of the function of planning for the present support or care of the child.”
- 6) West Virginia Income Maintenance Manual Chapter 15.2.C.2 states that the specific cause of absence is separation or divorce when the parent has been ordered by the court to support and is adhering to that court order.
- 7) West Virginia Income Maintenance Manual Chapter 15.2.C.2.8 states - “Cases involving joint custody of a child require a case-by-case determination of whether or not the definition of absence is met. This decision is made by the Worker and Supervisor, and a complete case recording explaining the decision must be made. When the child is physically in the home of each parent for portions of the month, the absence is not of a continuous nature and both parents continue to act as parents to the child. On a regular basis, they make decisions and arrangements in the child’s best interest. Therefore, absence does not exist when: the parents have **legal joint custody** (emphasis added) of the child; and the child is physically in the home of each parent for portions of the month; and there is an ongoing, continuing relationship between the child and parents, with both parents involved in providing parental support and care.”

VIII. CONCLUSIONS OF LAW

- 1) Policy states that for AFDC and AFDC-Related Medicaid purposes, a child must be deprived of parental support and care. When a child resides with one parent, the deprivation factor must be either death or continued absence of the other parent. Continued absence means that the parent is “physically absent from the home for any reason; and the nature of the absence is such as to interrupt or terminate the parent’s functioning as provider of maintenance, physical care or guidance for the child; and the known or indefinite duration of the absence precludes counting on the parent’s performance of the function of planning for the child’s present support or care.” The specific cause of absence is separation or divorce when the parent has been ordered by the court to support and is adhering to that court order. Absence does not exist when: the parents have **legal joint custody** (emphasis added) of the child; and the child is physically in the home of each parent for portions of the month; and there is an ongoing, continuing relationship between the child and parents, with both parents involved in providing parental support and care.
- 2) The Claimant contended that ----’s father has been ordered to pay child support; however ---- does not spend time at his residence on a regular basis, as he works out of town and the child does not feel comfortable in his home. The Claimant stated that ----’s father does not initiate contact with her and makes no attempt to communicate with her via sign language. While ----’s father occasionally takes her to speech class, his continued absence from the home clearly interrupts his functioning as a provider of regular maintenance, physical care or guidance. As there is no evidence of a legal custody arrangement between the parents - and the child’s father reportedly provides only sporadic physical care and guidance - the deprivation factor of continued absence has been established.

IX. DECISION:

It is the ruling of the State Hearing Officer to **reverse** the action of the Department in denying the Claimant’s application for AFDC Medicaid. The Claimant’s Medicaid application must be approved retroactively to the date of application, provided that all other eligibility factors were met.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of December 2012.

Pamela L. Hinzman
State Hearing Officer