



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
433 MidAtlantic Parkway
Martinsburg, WV 25404
Telephone: (304) 352-0805 Fax: (304) 558-1992

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Inspector General

July 15, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1636

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 Health and Human Resources. 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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Peter VanKleeck, BCF, [REDACTED] DHHR

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

██████████,

Appellant,

v.

ACTION NO.: 22-BOR-1636

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

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 West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on June 28, 2022, on an appeal filed May 11, 2022.

The matter before the Hearing Officer arises from the Respondent's April 11, 2022 decision to terminate the Appellant's WV Medicaid benefits.

At the hearing, the Respondent appeared by Peter VanKleeck, Family Support Supervisor. Appearing as a witness for the Respondent was Cheryle Lippman, Investigations and Fraud Management. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was her son, ██████████. The witnesses were placed under oath and the following documents were admitted into evidence:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Notice (EDC1), dated April 11, 2022
- D-3 West Virginia Income Maintenance Manual, Chapter 2, §2.2
- D-4 West Virginia Income Maintenance Manual, Chapter 10, §10.4.2.B.2
- D-5 Sworn Statement, dated April 30, 2022
- D-6 Sworn Statement, dated May 2, 2022
- D-7 Sworn Neighbor Statement, dated May 2, 2022
- D-8 Sworn Statement, dated May 2, 2022
- D-9 Sworn Statement, dated May 9, 2022
- D-10 Landlord Verification, dated May 2, 2022
- D-11 School Attendance Verification for ██████████

- D-12 Employment Verification for [REDACTED]
- D-13 Wage Data for [REDACTED]
- D-14 United States Postal Service Address Information
- D-15 DFA-FH-2 dated April 29, 2022; Lease Agreement dated July 1, 2021; 2021 West Virginia Personal Income Tax Return
- D-16 Screen print of Appellant's eRAPIDS Case Summary; DFA-SNAP-2; CSLR signature page dated October 15, 2020; PRC2 signature page dated April 2, 2021
- D-17 Electronic mail exchanges between [REDACTED] from July 12, 2020
- D-18 Screen print of Facebook posts dated June 6 and June 9, 2020

Appellant's Exhibits:

- A-1 Copy of [REDACTED] State of West Virginia Voter's Registration Card; Copy of [REDACTED] West Virginia Driver's License issued January 25, 2021; [REDACTED] pay statements from [REDACTED] pay dates May 6 and May 20, 2022; [REDACTED] personal and salary information; [REDACTED] 2021 Economic Impact Payment information, dated February 21, 2022; Copy of Term Life Insurance offer from [REDACTED]

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 receiving West Virginia Medicaid benefits for herself and her three children: Children's Medicaid (Age 1-5), Children's Medicaid (Age 6-18), and Transitional Medicaid (TM). (Exhibit D-2)
- 2) On April 8, 2022, the Respondent's local office received information from the Investigations and Fraud Management (IFM) Unit that the Appellant and her daughter, [REDACTED] were not living in the state of West Virginia, and that her sons, [REDACTED] and [REDACTED] were living with their father in [REDACTED] West Virginia. (Exhibit D-1)
- 3) On April 11, 2022, the Respondent sent notification of Medicaid benefit closure to the Appellant. (Exhibit D-2)
- 4) The Appellant, her cohabitor [REDACTED], and their daughter-in-common [REDACTED], moved to [REDACTED] in June 2020, and continue to live there.
- 5) The Appellant is on the lease for the [REDACTED] property. (Exhibit D-10)
- 6) The [REDACTED], West Virginia Family Court and Bureau of Child Support Enforcement show the Appellant's address as [REDACTED].

- 7) The Appellant's sons reside with the Appellant in [REDACTED] every other week.
- 8) The Appellant's daughter, [REDACTED] attends school in the state of [REDACTED]
- 9) The Appellant has not abandoned her [REDACTED] residency.

APPLICABLE POLICY

To be eligible to receive benefits, the client must be a resident of West Virginia. The client must live within the borders of West Virginia for purposes other than vacation. There is no minimum time requirement for how long the client must live or intends to live in West Virginia. The client is not required to maintain a permanent or fixed dwelling. **An individual remains a resident of the former state until he arrives in West Virginia with the intention of remaining indefinitely. Therefore, intent to establish or abandon residency must be known before the state of residence is determined.** [Emphasis added] (West Virginia Income Maintenance Manual, Chapter 2, §2.2)

West Virginia Income Maintenance Manual, Chapter 2, §2.2.3.C.1, *Visiting*, explains that temporary visits out of state with the intent to return do not affect the client's state of residence for Medicaid and WVCHIP.

DISCUSSION

The Appellant and her children were receiving WV Medicaid benefits. In April 2022, the Respondent's IFM unit reported to the local DHHR office that the Appellant was no longer residing in West Virginia. On April 11, 2022, the Respondent sent notice of closure to the Appellant. The Appellant appeals the Respondent's decision, averring that she maintains her West Virginia residency.

West Virginia policy does not mandate a minimum time requirement for how long an individual must live or intend to live in West Virginia. Additionally, policy does not require that an individual maintain a permanent or fixed dwelling. An individual remains a resident of the former state until arriving in the state of West Virginia with the intention of remaining indefinitely. Therefore, intent to establish or abandon residency must be known before the state of residence is determined. West Virginia policy also recognizes that temporary visits out of state with the intent to return do not affect the client's state of residence for Medicaid and WVCHIP.

The Appellant presented copies of various documents attempting to show that she remains a West Virginia resident and has no intention to abandon her residency. However, the preponderance of evidence presented showed that the Appellant abandoned her West Virginia residency in June of 2020 and established her residency in the state of [REDACTED] and continues to reside there.

The Appellant is not a temporary visitor to [REDACTED] as she asserted. The Appellant, her daughter [REDACTED], and her daughter's father all moved to [REDACTED] in June of 2020. The Appellant

testified that she stays in [REDACTED] so as not to be homeless, explaining that she had no choice but to stay with [REDACTED] because she could not afford her own residence. The Appellant is fully employed making over \$47,000 per year, yet she continues to maintain a home in [REDACTED], is on the lease for that home, and her sons live with her there during the weeks they are not living with their father in West Virginia. Additionally, it is undisputed that the [REDACTED] West Virginia Family Court and Bureau of Child Support Enforcement list the [REDACTED] address for the Appellant, and that the United States Postal Service (USPS) confirmed that the Appellant receives mail at the [REDACTED] address.

Other evidence presented showed that the Appellant is residing in [REDACTED]: sworn statements for which Investigator Lippman testified she obtained from the Appellant's neighbor in [REDACTED], the father of the Appellant's sons, an email exchange between the Appellant and the father of her sons regarding her move to [REDACTED], and some social media posts by the Appellant – all of which the Appellant did not refute. Although little weight was given to these other sworn statements, email exchange, and social media posts, the totality of the evidence showed that the Appellant moved to [REDACTED] and has resided there since June 2020.

The documents the Appellant presented to show she did not intend to abandon her West Virginia residency, is unpersuasive. The West Virginia address she uses is that of her long-time friend, [REDACTED], who lives at that address with her husband and child. The Appellant avers that this is also her place of residence. Although the Appellant uses [REDACTED] address, the testimony and evidence show that the Appellant does not actually reside at that address. The Appellant testified that she stays in [REDACTED] only when she has custody of her sons but returns back and stays in West Virginia every other week. However, the Appellant's later testimony and other evidence presented does not support this assertion. The Appellant provided conflicting testimony regarding her purported residence in West Virginia with her daughter [REDACTED]. The Appellant testified that she stayed at [REDACTED] house with her daughter [REDACTED]. However, she also stated that only she stayed in [REDACTED] house because there was not enough room for the children.

The Appellant previously presented to the Respondent a purported lease agreement between [REDACTED] and herself. This lease agreement indicates that the Appellant leases the home in exchange for "Domestic Help and Pet Care to be performed monthly." Although [REDACTED] did not appear for the hearing, Investigator Lippman testified that [REDACTED] had given her a sworn statement that the Appellant stays there on occasion, pays her a couple of hundred [dollars] monthly, and stays in [REDACTED] with her boyfriend. The Appellant denied paying [REDACTED] a monthly rent or that she and [REDACTED] are romantically involved. Although [REDACTED] sworn statement was not considered to support the truth of the matter asserted, it did make the legitimacy of the lease suspect especially when examined with other conflicting testimony and evidence. The Appellant's son, [REDACTED], gave Investigator Lippman a sworn statement reporting that the Appellant lives in [REDACTED] with [REDACTED] and their daughter-in-common, [REDACTED], and that the Appellant has not lived with [REDACTED]. Although at the hearing, [REDACTED] added a caveat to his sworn statement contending that he "did not know all the facts" when he gave Investigator Lippman his sworn statement; that is, at the time he gave his sworn statement (May 9, 2022), he did not know the Appellant stayed with [REDACTED] sometimes. [REDACTED] testimony was unconvincing.

Although policy does not require an individual to have a fixed or permanent address to be considered a resident of West Virginia or a minimum time requirement for how long an individual must live or intend to live in West Virginia, intent to abandon or establish residency must be determined. The Appellant has lived in [REDACTED] for the past two years with the father of her daughter, maintaining a household for her daughter and her sons. The Appellant's assertion that she only temporarily stays in [REDACTED] and returns to live in West Virginia every other week is unpersuasive and is not supported by the evidence. The facts presented show the Appellant established residency in the state of [REDACTED] in 2020 and remains a resident of [REDACTED].

CONCLUSIONS OF LAW

- 1) Policy requires that an individual be a resident of West Virginia to receive benefits from the state.
- 2) An individual remains a resident of the former state until arriving in the state of West Virginia with the intention of remaining indefinitely.
- 3) Intent to establish or abandon residency must be known before the state of residence is determined.
- 4) The Appellant moved to and established residency in [REDACTED] in June 2020.
- 5) The preponderance of evidence showed that the Appellant has not abandoned her [REDACTED] residency as she continues to reside in [REDACTED] and has not re-established her West Virginia residency with the intent to remain indefinitely.
- 6) As the Appellant is a resident of the state of [REDACTED] a, the Respondent's decision to terminate the Appellant's WV Medicaid benefits is affirmed.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to terminate the Appellant's West Virginia Medicaid benefits.

ENTERED this 15th day of July 2022

Lori Woodward, Certified State Hearing Officer