



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 27, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 26, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the School Clothing Allowance (SCA) Program.

In arriving at a decision, the State Hearings 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 School Clothing Allowance Program is based on current policy and regulations. Some of these regulations state as follows: the child must be living with a specified relative in a place established as the relative's home (WV Income Maintenance Manual Section 15.2 B).

The information which was submitted at your hearing revealed that during the time period in which the School Clothing Allowance Program was operational (July 1 through July 31, 2005), it had not been established by the court that you were a specified relative.

It is the decision of the State Hearings Officer to uphold the action of the Department to deny your application for the School Clothing Allowance (SCA) Program.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Leslie Slone, Department Hearing Rep.

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

_____,

Claimant,

v.

Action Number: 05-BOR-6152

**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 October 26, 2005 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 October 26, 2005 on a timely appeal, filed July 7, 2005.

It should be noted here that the School Clothing Allowance application was denied pending a hearing decision. It should also be noted that the hearing was originally scheduled for August 30, 2005 but was rescheduled after the claimant failed to keep the appointment and provided a letter on 9-7-05 stating that her mother had passed away and requested another appointment.

II. PROGRAM PURPOSE:

The Program entitled School Clothing Allowance Program is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The WV WORKS School Clothing Allowance (SCA) Program is designed to provide clothing assistance for school age children. These children must be foster children or recipients of WV WORKS during the month of July. The West Virginia School Clothing Allowance (WVSCA) provides clothing assistance for school age children in families who do not wish to apply or are not financially eligible for WV WORKS but whose income is equal to or less than 100% of the Federal Poverty Level.

III. PARTICIPANTS:

1. _____, Claimant.
2. Leslie Slone, Department Hearing Representative.

Presiding at the Hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department took the correct action to deny the application for the School Clothing Allowance (SCA) Program.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Sections 15 App. B, App. C, 15.2.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHR-1 Copy of denial letter dated 7-6-05 (3 pages).
- DHR-2 Copy of hearing summary outline (2 pages).
- DHR-3 Copy of WV Income Maintenance Manual Section 15.2 B (2 pages).
- DHR-4 Copy of WV Income Maintenance Manual Section 15, App. B & C (2 pages).
- DHR-5 Copy of birth certificate and paternity affidavit of _____ (2 pages).
- DHR-6 Copy of court order entered 2-9-05 (4 pages).

Claimant's Exhibits:

- Cl-1 Copy of temporary order from Family Court entered 9-12-05.

VII. FINDINGS OF FACT:

- 1) An application for the School Clothing Allowance (SCA) Program was received on 6-28-05 and was denied on 7-5-05 due to the claimant not being a qualified specified relative to the child (_____).
- 2) The child's birth certificate did not reflect that the claimant's son was the father and paternity had not been established and the claimant had been awarded custody but court proceedings to establish a legal relationship were not completed at the time of the application for the SCA.

- 3) The period of consideration for the SCA Program was 7-1-05 through 7-31-05.
- 4) Notification of denial of the application was sent on 7-6-05 (Exhibit #DHR-1).
- 5) The claimant provided a copy of a temporary order entered on 9-12-05 (Exhibit #CI-1) which granted child support retroactive to March, 2003 and included the statement that the claimant is recognized as the paternal grandmother.
- 6) The claimant testified that since the court order for child support was retroactive to March, 2003, she should be approved for the SCA Program as her grandson needs winter clothes.
- 7) Ms. Slone testified that the specified relative relationship did not exist during the application period (7-1-05 through 7-31-05) and the denial of the application was appropriate.
- 8) The areas of dispute involves whether a specified relative relationship existed and was verified during the application process and whether the temporary order of the Family Court Judge (_____) was sufficient to verify that a specified relative relationship existed during the application process. The application process began on 7-1-05 and ended on 7-31-05 for the SCA Program. The information available to the Department at the time the application was processed showed that the claimant did not meet the requirement of being a specified relative as there was no legal documentation showing that paternity was established on behalf of her son. In regard to whether the temporary order of the Family Court Judge showed that a specified relative relationship existed at the time the application was processed, the writing on the order initialed by the Judge states that “_____ is hereby recognized as the paternal grandmother of _____”. The order was entered 9-12-05 which was after the application process for the SCA Program had ended in July, 2005 and the specified relative relationship cannot be backdated to meet eligibility requirements for the SCA Program.

- 9) WV Income Maintenance Manual Section 15.2 B states, in part:

" In order to receive cash assistance, AFDC/U Medicaid or AFDC/U-Related Medicaid as a dependent child the following requirements must be met.....

B. LIVING WITH A SPECIFIED RELATIVE (WV WORKS, Medicaid, AFDC-Related Medicaid)

The child must be living with a specified relative in a place established as the relative’s home. A specified relative is defined below.

- Natural or adoptive parents.....
- Blood relative: Those of half-blood, brothers, sisters, grandparents, great-grandparents, great-great-grandparents, uncles or aunts, great-uncles or aunts, great-great uncles or aunts, nephews or nieces, first cousins, first cousins once-removed.
- Legal step-parent, step-brother or step-sister.

- Legal spouses of any person named in any of the above groups except for spouses of step-relatives.
- NOTE: Legal custody or guardianship of a child does not, in itself, qualify a person as a specified relative. A relative of the father of a child born out of wedlock can qualify as a specified relative only if the child's paternity has been established.

10) WV Income Maintenance Manual Section 15, App. C, A 13 states, in part:

“13. Beginning Date of Eligibility

Eligibility is determined for the month of July only.”

VIII. CONCLUSIONS OF LAW:

- 1) WV Income Maintenance Manual Section 15.2 B states that the child must be living with a specified relative in a place established as the relative's home and defines a specified relative as natural or adoptive parents, blood relative, legal step-parent, step-brother or step-sister, or legal spouse. At the time of the application for the SCA Program, there was no legal documentation which established that the claimant was a specified relative to the child for whom she was applying. In addition, action on an application must be based on factors which exist at the time of the application and the fact that eligibility factors changed after the application process is completed has no bearing on the denial of the application for the SCA Program.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to deny the application for the SCA Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27h Day of October, 2005.

**Thomas M. Smith
State Hearing Officer**