



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 1, 2005

Mrs. _____

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 20, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your School Clothing Allowance application.

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: 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. Under certain circumstances, eligibility continues during periods of separation of the child and the specified relative. (West Virginia Income Maintenance Manual Section 15.2 B LIVING WITH A SPECIFIED RELATIVE).

The information submitted at your hearing revealed: You do not meet the definition of a Specified Relative since, paternity has never been established for the minor child in question.

It is the decision of the State Hearings Officer to uphold the action of the Department to deny the School Clothing Allowance application, because you are not a specified relative.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Vicky Malone, Family Support Specialist

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

_____,

Claimant,

v.

Action Number: 05-BOR-6376

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

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 1, 2005 for Mrs. _____. 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 September 20, 2005 on a timely appeal filed August 9, 2005.

It should be noted here that Mrs. _____ has not received the 2005 School Clothing Allowance benefits for the child in question. A pre-hearing conference was held between the parties prior to the scheduled hearing. Mrs. _____ did not have legal representation.

II. PROGRAM PURPOSE:

The Program entitled School Clothing Allowance 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:

Mrs. _____, Claimant

Ms. Vicky Malone, Family Support Specialist – Kanawha DHHR Office

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided: Does Mrs. _____ meet the definition of a Specified Relative under the West Virginia Works Program?

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 9.21 (A) (1) THE ASSISTANCE GROUP – Who Must Be Included; West Virginia Income Maintenance Manual Section 15.2 B LIVING WITH A SPECIFIED RELATIVE; West Virginia Income Maintenance Manual Chapter 15, Appendix C (A) (6) – 2005 WEST VIRGINIA SCHOOL CLOTHING ALLOWANCE (WVSCA) – Who Must Sign and; West Virginia Code §51-2A-2 – Family Court Jurisdiction; Exception; Limitations.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Denial Letter dated 08/01/05

D-2 West Virginia Income Maintenance Manual Sections 9.21 (A) (1); 15.2 B and; Chapter 15, Appendix C

D-3 Scheduling Notice dated 08/10/05

Claimants' Exhibits:

C-1 Civil Action No. 01-D-115 FINAL ORDER

VII. FINDINGS OF FACT:

1) Mrs. _____ has an active West Virginia Works case for her grandchild and, received School Clothing Allowance (SCA) benefits. She also applied for a School Clothing Allowance voucher for another minor child currently in her care. Paternity has never been established for the minor child in question. The putative father is Mrs. _____'s brother-in-law. The Department denied the application because neither Mrs. _____ nor her husband meets the definition of a specified relative. Mrs. _____ has received a School Clothing Allowance voucher for the minor child in question since July 2000.

The Family Court of [REDACTED] issued a Final Order Filed February 14, 2002. It was ADJUDGED and ORDERED:

- That _____ is a fit and proper person for the minor child, _____;

- That the minor child, _____, shall continue to reside with the Petitioner, _____;
- That visitation with the minor child will be as agreed to by the parties and shall be supervised by _____.

2) The State Hearing Officer reversed the Department’s action at the conclusion of the hearing, based upon certain Findings of Fact in The Family Court of Kanawha County Final Order which states in part,

- That _____ is the maternal grandmother of the minor child and;
- That the recommendation of the evaluator was that placement with the child’s grandmother is appropriate and should continue.

3) West Virginia Income Maintenance Manual Section 9.21 (A) (1) THE ASSISTANCE GROUP – Who Must Be Included states:

NOTE: Whether or not an individual has earned or unearned income sufficient to meet his own needs, or the needs of his dependents, is not a factor to consider when determining if the individual is required to be included in the AG.

NOTE: Although the individuals listed below are required to be included in the WV WORKS AG, if otherwise eligible, an SSI recipient, age 18 or over, cannot be included in the AG. See item 3 below.

The following individuals are required to be included:

- All minor, dependent, blood-related and adoptive siblings who live in the same household and are otherwise eligible. For this purpose only, otherwise eligible means living with a specified relative.

EXAMPLE: Two children who have the same mother but different fathers live with the paternal grandparents of child A. The children are blood-related and would normally be required to be included in the same AG. However, the grandparents of child A are not specified relatives of child B. Therefore, child B is not eligible for WV WORKS.

- The parent(s) of the child(ren) identified above when the parent(s) lives with the child(ren):

In cases of joint custody, only the custodial parent is included. The custodial parent is the one with whom the child(ren) lives more than 50% of the time in a given month. The custodial parent of any child may change from month to month. If the child lives with each parent exactly 50% of the time, the parents must decide which is the custodial parent.

Parents who work, or are looking for work away from home, including those who work out of state, must be included, unless there is a legal separation.

- The legal spouse of the parent described above, regardless of the legal spouse's legal relationship to the child(ren).

The stepparent may not choose to be excluded when the parent is in the home.

- All minor, dependent, blood-related and adoptive children of the legal spouse of the parent, regardless of the relationship of the children to the other children in the home, provided they are otherwise eligible, i.e., living with a specified relative.
- The non-parent caretaker who has chosen to be included by signing form OFS-WVW-10 within the past 12 months.
- The parent(s) of an unemancipated minor parent, even when the minor parent requests benefits for the child only.

NOTE: When the parent(s) of the unemancipated minor parent is included, the blood-related siblings of the minor parent are included. The spouse of the parent and any of his dependent children who are blood-related siblings to each other must also be included.

NOTE: When an individual is required to be in two or more AGs, the AGs must be combined.

4) West Virginia Income Maintenance Manual Section 15.2 B LIVING WITH A SPECIFIED RELATIVE states in part:

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. Adoption procedures must be finalized in order for an adoptive parent to qualify as a specified relative. If a child is living with his natural father and paternity has been legally established, the father is considered a specified relative;

NOTE: When an adoption is finalized the ties between the natural parent(s) and the child are severed. The natural parent(s) do not retain a specified relationship as a parent.

EXAMPLE: A set of paternal grandparents legally adopts a grandchild. The father of the child no longer has a specified relationship of parent to the child, but now has a specified relationship as the child's brother.

NOTE: When parental rights have been severed, but no adoption has been finalized, the parent is no longer a specified relative, but all other relationships of the child are unaffected.

EXAMPLE: A father has all parental rights severed by a court order. The child goes to live with the father's sister. The sister is still an aunt to the child and therefore a specified relative. Spouses of step-parents are not specified relatives.

EXAMPLE: A man and his wife have living with them a child from his previous marriage. They get a divorce, and the child continues to live with the wife, and she remarries. She still qualifies as a specified relative, as she is a former step-parent, but her new husband does not.

- Blood relative: Those of half-blood, brothers or sisters, grandparents, great grandparents, great-great grandparents, great-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. The specified relationship exists even though the marriage terminated in death or divorce.

EXAMPLE: If a step-grandmother has 2 step-grandchildren living with her and she divorces her husband, she is still the former legal spouse of the children's grandfather, who is a specified relative. She is, therefore, a specified relative

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. Under certain circumstances, eligibility continues during periods of separation of the child and the specified relative. Refer to Chapter 8.

NOTE: For WV WORKS, it may be impossible for a relative to establish a home for a child who is in a foster home, or other place, without financial assistance before the child enters his home. The payment may be initiated any time within 30 days prior to the date the child actually goes to live with the specified relative. If the Department made an AFDC Foster Care payment, a WV WORKS payment cannot be initiated for the same period because this results in a duplication of payments.

5) West Virginia Income Maintenance Manual Chapter 15, Appendix C (A) (6) – 2005 WEST VIRGINIA SCHOOL CLOTHING ALLOWANCE (WVSCA) – Who Must Sign states,

The specified relative with whom the child lives must sign the DFA-WVSC1 or the inROADS signature page. Only one signature is required.

6) West Virginia Code §51-2A-2 – Family Court Jurisdiction; Exception; Limitations:

(a) The family court shall exercise jurisdiction over the following matters:

- (1) All actions for divorce, annulment or separate maintenance brought under the provisions of article three, four or five, chapter forty-eight of this code except as provided in subsections (b) and(c)of this section;
- (2) All actions to obtain orders of child support brought under the provisions of articles eleven, twelve and fourteen, chapter forty-eight of this code;
- (3) All actions to establish paternity brought under the provisions of article twenty-four, chapter forty-eight of this code and any dependent claims related to such actions regarding child

support, parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child;

(4) All actions for grandparent visitation brought under the provisions of article ten, chapter forty-eight of this code;

(5) All actions for the interstate enforcement of family support brought under article sixteen, chapter forty-eight of this code and for the interstate enforcement of child custody brought under the provisions of article twenty, chapter forty-eight of this code;

(6) All actions for the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, including actions brought under the uniform child custody jurisdiction and enforcement act, as provided in article twenty, chapter forty-eight of this code;

(7) All petitions for writs of habeas corpus wherein the issue contested is custodial responsibility for a child;

(8) All motions for temporary relief affecting parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support or domestic violence;

(9) All motions for modification of an order providing for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child or for child support or spousal support;

(10) All actions brought, including civil contempt proceedings, to enforce an order of spousal or child support or to enforce an order for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child;

(11) All actions brought by an obligor to contest the enforcement of an order of support through the withholding from income of amounts payable as support or to contest an affidavit of accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

(12) All final hearings in domestic violence proceedings;

(13) Petitions for a change of name, exercising concurrent jurisdiction with the circuit court;

(14) All proceedings for payment of attorney fees if the family court judge has jurisdiction of the underlying action;

(15) All proceedings for property distribution brought under article seven, chapter forty-eight of this code;

(16) All proceedings to obtain spousal support brought under article eight, chapter forty-eight of this code; and

(17) All proceedings relating to the appointment of guardians or curators of minor children brought pursuant to sections three, four and six, article ten, chapter forty-four of this code, exercising concurrent jurisdiction with the circuit court.

(b) If an action for divorce, annulment or separate maintenance does not require the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child and does not require an award or any payment of child support, the circuit court has concurrent jurisdiction with the family court over the action if, at the time of the filing of the action, the parties also file a written property settlement agreement executed by both parties.

(c) If an action for divorce, annulment or separate maintenance is pending and a petition is filed pursuant to the provisions of article six, chapter forty-nine of this code alleging abuse or neglect of a child by either of the parties to the divorce, annulment or separate maintenance action, the orders of the circuit court in which the abuse or neglect petition is filed shall supercede and take precedence over an order of the family court respecting the allocation of custodial and decision-making responsibility for the child between the parents. If no order for the allocation of custodial and decision-making responsibility for the child between the parents

has been entered by the family court in the pending action for divorce, annulment or separate maintenance, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making responsibility for the child between the parents and defer to the orders of the circuit court in the abuse or neglect proceedings.

(d) A family court is a court of limited jurisdiction. A family court is a court of record only for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court is specifically authorized in this section and in chapter forty-eight of this code. A family court may not exercise the powers given courts of record in section one, article five, chapter fifty-one of this code or exercise any other powers provided for courts of record in this code unless specifically authorized by the Legislature. A family court judge is not a "judge of any court of record" or a "judge of a court of record" as the terms are defined and used in article nine of this chapter.

VIII. CONCLUSIONS OF LAW:

1) West Virginia Code §51-2A-2 (a) (3) – Family Court Jurisdiction; Exception; Limitations states in part,

The family court shall exercise jurisdiction over the following matters:

All actions to establish paternity brought under the provisions of article twenty-four, chapter forty-eight of this code and any dependent claims related to such actions regarding child support, parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child.

The State Hearing Officer erred in rendering an incorrect decision at the conclusion of the September 20, 2005 hearing. The Family Court of [REDACTED] Final Order Filed February 14, 2002 did not ADJUDGE and ORDER the establishment of paternity for the minor child. Instead, it established guardianship, residence and, supervised visitation;

2) West Virginia Income Maintenance Manual Section 15.2 B LIVING WITH A SPECIFIED RELATIVE states in part,

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. Under certain circumstances, eligibility continues during periods of separation of the child and the specified relative.

Paternity has never been established for the minor child;

3) West Virginia Income Maintenance Manual Section 9.21 (A) (1) THE ASSISTANCE GROUP – Who Must Be Included states in part,

The following individuals are required to be included:

All minor, dependent, blood-related and adoptive siblings who live in the same household and are otherwise eligible. For this purpose only, otherwise eligible means living with a specified relative.

Mrs. _____'s eligibility as a Specified Relative has never been established for the minor child in question and finally;

4) West Virginia Income Maintenance Manual Chapter 15, Appendix C (A) (6) – 2005 WEST VIRGINIA SCHOOL CLOTHING ALLOWANCE (WVSCA) – Who Must Sign states,

The specified relative with whom the child lives must sign the DFA-WVSC1 or the inROADS signature page. Only one signature is required.

The Department approved School Clothing Allowance Benefits, for the minor child in question, for several years in error. The Department previously failed to establish if Mrs. _____ met the definition of a Specified Relative. The 2005 application was properly reviewed according to the 2005 WEST VIRGINIA SCHOOL CLOTHING ALLOWANCE policy.

IX. DECISION:

It is the decision of the State Hearing Officer to reverse the verbal decision of September 20, 2005 and, uphold the action of the Department in this particular matter. The Department acted properly in denying the 2005 School Clothing Allowance application.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of November, 2005.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**