



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 17, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 31, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the School Clothing Allowance Program.

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 School Clothing Allowance (SCA) Program is based on current policy and regulations. Some of these regulations state as follows: If the gross non-excluded income is equal to or greater than 100% FPL, the family is ineligible for the WVSCA. (Chapter 15, Appendix C, Part I, of the West Virginia Income Maintenance Manual)

The information which was submitted at your hearing revealed that your monthly gross non-excluded income for July 2006 was anticipated incorrectly.

It is the decision of the State Hearing Officer to reverse the decision of the Department to deny your application for the School Clothing Allowance Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Melissa Kennedy, DHHR

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

_____,

Claimant,

v.

Action Number: 06-BOR-2531

**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 31, 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 31, 2006 on a timely appeal, filed July 28, 2006.

It should be noted here that the claimant's SCA benefits have been denied.

II. PROGRAM PURPOSE:

The Program entitled School Clothing Allowance 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:

_____, Claimant
Melissa Kennedy, Department Hearing Representative

Presiding at the Hearing was Margaret M. Mann, 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 was correct in the decision to deny the claimant's application for the SCA as the household did not meet the financial requirements.

V. APPLICABLE POLICY:

Chapter 15, Appendix C, Part I., Section 10.24A and Chapter 10, Appendix A of the West Virginia Income Maintenance Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 15, Appendix C, of the West Virginia Income Maintenance Manual
- D-2 Appendix A, Chapter 10, of the West Virginia Income Maintenance Manual
- D-3 RAPIDS Screen EASC School Clothing Allowance Budget
- D-4 RAPIDS Screen AFSE Self-Employment
- D-5 Self-Employment Calculations
- D-6 2005 U.S. Individual Income Tax Return
- D-7 Notification Letter dated 07/27/06

Claimant's Exhibits:

- C-1 Letter from _____, _____, dated 08/30/06
- C-2 Income Statement

VII. FINDINGS OF FACT:

- 1) The claimant made an application for the School Clothing Allowance Program July 3, 2006. There are four in the Assistance Group. Mr. & Mrs. _____ and two school age children. There is another child in the home, _____, who is age eighteen, not in school and not a minor. He is not eligible to be included.
- 2) The income in the household was self-employment at a trucking company of _____. The gross income counted was \$1,855.08. This was calculated averaging Mr. _____'s 2005 earnings from self-employment. (D-3, D-4, D-5 & D-6) The 100% FPL for four is \$1667. (D-2)

- 3) A letter was sent to the claimant dated July 27, 2006. It reads in part: Your application for School Clothing Allowance dated 07/03/06 has been denied. Reason: Income is too much for you to receive benefits. (D-7)
- 4) The claimant disagrees with the Department using 2005 income to calculate the July 2006 income for the SCA application. Testimony from the claimant revealed that her husband is a sub-contractor. What her husband made last year is not what he made this year. He did not have any income during the month of July 2006.
- 5) The claimant provided a statement from _____, _____ dated August 30, 2006. It reads in part: _____, _____ has not worked for our company since June 27, 2006. This is due to lack of coal sales. We cannot predict at this time when he will be able to return to work. (C-1) The claimant reported he received his last pay June 29, 2006.
- 6) Testimony from Ms. _____ revealed she had discussed the case with the worker who took the initial action to deny the application. It was felt a statement from the employer was not enough to approve the application. It was felt that all of the income for 2006 should be determined.
- 7) Testimony revealed that if the claimant meets the income guidelines for the SCA Program, the assets of the AG will need to be addressed.
- 8) Chapter 15, Appendix C #13, of the West Virginia Income Maintenance Manual reads in part that eligibility is determined for the month of July only.
- 9) Chapter 15, Appendix C, Part I., of the West Virginia Income Maintenance Manual reads that gross non-excluded income for the AG is totaled and compared to 100% FPL. There are no deductions from the gross non-excluded income, whether the income is earned or unearned. Income sources are treated according to WV WORKS column in Section 10.3. Income is prorated and converted to arrive at a monthly amount as it is for any other program. If the gross non-excluded income is equal to or greater than 100% FPL, the family is ineligible for the WVSCA.
- 10) Chapter 10, Appendix A, shows the maximum 100% FPL level for four is \$1667.
- 11) Section 10.24D #4 of the West Virginia Income Maintenance Manual reads in part that the method used to determine monthly gross income from self-employment varies with the nature of the enterprise. It is necessary to determine which of the following types of self-employment applies to the client's situation. Once the pattern of self-employment is determined, this is used to determine how the income is counted. (1) Persons Receiving Regular Income: These persons receive income on a more or less regular schedule (weekly, monthly, etc.), or receive specific amount from the business each week or month and/or receive the balance of profit from the enterprise at the end of the business year. The income of people in this situation is converted to a monthly amount according to item A above. (2) Persons Receiving Irregular Income: Many persons derive income from short-term seasonal self-employment. This seasonal enterprise may be the major source of income for the year, or the income may be only for the period of time the person is actually engaged in this enterprise, with other sources of income being available during the remainder of the year. Since the income is seasonal, it must be

averaged over the period of time it is intended to cover, even if it is the major source of income for the year. However, if the averaged amount of past income does not accurately reflect the anticipated monthly circumstances because of a substantial increase or decrease in business, the income is calculated based on anticipated earnings.

- 12) Section 10.24A of the West Virginia Income Maintenance Manual reads in part that for all cases, the Worker must determine the amount of income that can be reasonably anticipated for the AG.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in that gross non-excluded income for the AG is totaled and compared to 100% FPL. There are no deductions from the gross non-excluded income, whether the income is earned or unearned. If the gross non-excluded income is equal to or greater than 100% FPL, the family is ineligible for the WVSCA.
- 2) Policy requires that the Worker must determine the amount of income that can be reasonably anticipated for the AG. The Department used the household member's averaged self-employment income from the year 2005. Testimony revealed that this income does not accurately reflect the current income.
- 3) The Department will reevaluate the claimant's financial eligibility for the SCA Program by using all of the non-excluded income for July 2006. Also, all other eligibility requirements must be met.

IX. DECISION:

It is the finding of the State Hearing Officer that the Department is reversed in the decision to deny the claimant's application for the School Clothing Allowance Program using 2005 income. The claimant's financial eligibility will be reevaluated using all of the non-excluded income for July 2006. The claimant will be required to provide all of the records needed to determine eligibility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of October, 2006.

**Margaret M. Mann
State Hearing Officer**