



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26753

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 15, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 18, 2007. Your hearing request was based on the Department of Health and Human Resources' denial of West Virginia School Clothing Allowance vouchers due to excessive assets.

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 West Virginia School Clothing Allowance Program is based on current policy and regulations. Some of these regulations state as follows: The asset limit is \$2,000. The WV WORKS asset policy applies to WVSCA. (West Virginia Income Maintenance Manual Chapter 15, Appendix C, J)

Information submitted at the hearing revealed that your available assets exceeds the maximum allowable.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your application for School Clothing Allowance vouchers.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Ann Hubbard, Economic Supervisor, DHHR

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

_____,

Claimant,

v.

Action Number: 07-BOR-1862

**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 September 18, 2007 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 September 18, 2007 on a timely appeal filed July 30, 2007.

II. PROGRAM PURPOSE:

The program entitled West Virginia 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:

_____, Claimant
Megan Garland, Family Support Specialist, DHHR

Presiding at the hearing was, Sharon K. Yoho 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 took the correct action in denying eligibility for the Claimant's School Clothing Allowance vouchers.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 15, Appendix C, J, Chapter 11.2, 11.3 and 11.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV Income Maintenance Policy 11.4
- D-2 WV Income Maintenance Policy 11.3
- D-3 WV Income Maintenance Policy Chapter 15 Appendix C
- D-4 Application for School Clothing Allowance dated June 23, 2007
- D-5 Written agreement signed by Claimant and X-husband
- D-6 Vehicle values and DMV Vehicle title information
- D-7 Letter from X-Husband dated July 8, 2007
- D-8 Notice of denial dated July 31, 2007

Claimant's Exhibits:

- C-1 Written agreement dated May 14, 2007, signed by Claimant and X-Husband
- C-2 Written agreement dated May 14, 2007, signed by Claimant, X-Husband and Son
- C-3 Final Court Order signed by Family Court Judge, March 2, 2006

VII. FINDINGS OF FACT:

- 1) The Claimant's household consists of two children and herself. She applied for a West Virginia School Clothing Allowance for her two children on June 23, 2007. This application listed assets of \$125.43 in a checking account, a 2005 Ford Escape registered and titled in her name, and a 2001 Honda Civic registered and titled in her or teenage son.
- 2) The Department accessed vehicle registration records through the Department of Motor Vehicles and found the above noted registration to be accurate. The Department assessed vehicle values through Intella Choice to determine trade in values for the two vehicles.
- 3) The trade in value of the Ford Escape was determined to be \$17,500. and the Honda Civic to be \$7103. The worker applied vehicle asset policy to determine that the larger valued vehicle could be excluded and that the trade-in value of the Honda Civic must be counted as an asset. The asset limit for School Clothing Allotment is \$2,000.

- 4) The worker issued a denial notice advising that the application was denied due to assets exceeding the allowable amount.
- 5) The claimant testified that she and her X-husband are under a Court Order that allows them to make agreements regarding their financial relationship and that the Courts will agree to it and make it part of the current Court Order.
- 6) The claimant provided a two written agreements, Exhibits C-1 and C-2 signed by both she and her X-husband outlining an agreement between the two of them regarding the Honda Civic. No evidence was provided to show that the Courts had incorporated this agreement in an official Court Order. The agreement reiterates that the Honda Civic is titled to the Claimant or Son. The Claimant and Son have possession of the vehicle and although the title is not in the X-Husband's name, he is retaining physical possession of the title until the vehicle is paid for. An agreement between the parents states that the vehicle cannot be sold and if the son defaults on payments that the claimant will sign over the title to the X-Husband.
- 7) The claimant was advised that the Hearing Officer would hold the record open for her to provide a Court Order which provides that she and her X-Husband are free to make written agreements to modify the Final Court Order. The claimant provided Exhibit C-3, Court Order entered March 2, 2006 which does not specify this freedom.
- 8) West Virginia Income Maintenance Chapter 15, Appendix C, J states:

The asset limit is \$2,000. the WV WORKS asset policy in Chapter 11 applies to WVSCA. If countable assets exceed \$2,000, the case is not eligible for WVSCA.
- 9) West Virginia Income Maintenance Chapter 11.4 states:

WV WORKS Note: Equity is not a factor in any step of the process determining vehicle assets.
One (1) vehicle is excluded regardless of value. The Current Market Value, not equity, of all other vehicles is an asset.
- 10) West Virginia Income Maintenance Chapter 11.2 states:

A client may not have access to some assets. To be considered an asset, the item must be owned by or available to the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset.

Legal proceedings such as, probate, liens, items encumbered, or otherwise unavailable, due to litigation are not considered assets until the court proceedings are completed and a court decision is reached. The agency is required to follow the dictates of the court order.

VIII. CONCLUSIONS OF LAW:

- 1) Evidence and testimony clearly support that this claimant has physical possession of the Honda Civic and that it is legally titled to her. The title being held in the physical possession of the X-Husband would not prevent the claimant from obtaining a duplicate title and selling the vehicle. Policy §11.2 provides that legal proceedings such as probate, liens, times encumbered, or otherwise unavailable, due to litigation are not considered assets until court proceedings are completed and a court decision is reached. No documents were provide to support that the May14, 2007 agreement was a part of any litigation or that it was to be incorporated into a Court Order. At this late date of September, the Claimant had no official court document showing that this vehicle was under litigation. The March 2, 2006 Court Order did not indicate that a written agreement between the parties would automatically be accepted by the Judge and no signature of a Judge was on the agreement.
- 2) The May 14, 2007 agreement provides that if the son defaults on his payments that the claimant would sign the title over to the X-Husband. This clearly supports that the vehicle is titled to the Claimant and that she has authority to sign the title over to others. Policy §11.2 provides that if the client cannot legally dispose of the item, it is not his asset. No evidence supports that this claimant could not legally sell this vehicle.
- 3) Based on what was provided to the Department at the time of the application, the Department was correct in their decision to deny the School Clothing Application due to excessive assets.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying the Claimant's application for West Virginia School Clothing Allowance vouchers.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th Day of October, 2007.

**Sharon K. Yoho
State Hearing Officer**