



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 14, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 3, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to deny your School Clothing Allowance application due to excessive income and assets.

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: All minor, blood-related or adoptive siblings living in the same household must be included in the Assistance Group. The parents of these children, if living in the household, must also be included (West Virginia Income Maintenance Manual § 9.21 A).

The information submitted at your hearing failed to establish _____'s presence in your household at the time of the School Clothing Allowance application. His income and assets should not have been used in determining eligibility for your household.

It is the decision of the State Hearings Officer to **reverse** the decision of the Department to deny your application for School Clothing Allowance based on excessive income and assets.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Leslie Gilbert, Economic Service Worker

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

_____,

Claimant,

v.

Action Number: 08-BOR-1984

**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 3, 2008 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 3, 2008 on a timely appeal, filed August 25, 2008.

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:

_____, Claimant
Leslie Gilbert, Economic Service Worker

Presiding at the Hearing was Kristi Logan, 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 correctly denied Claimant's application for School Clothing Allowance.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 15 Appendix C and 9.21

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Comments (CMCC) from Rapids Computer System from May 2008 – August 2008
- D-2 West Virginia Income Maintenance Manual § 15 Appendix C and 9.21
- D-3 Notification Letter dated August 20, 2008

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

- 1) Claimant applied for School Clothing Allowance (SCA) on July 31, 2008 for her children _____ and _____. A denial notification letter dated August 20, 2008 was issued and read in part (D-3):

Your application for School Clothing Allowance dated 7/31/08 has been denied. Income is too much for you to receive benefits. The amount of assets is more than is allowed for this benefit.

- 2) Leslie Gilbert, the caseworker who processed the SCA application, testified that the reason of the denial was due to Claimant's ex-husband's income and assets. Ms. Gilbert stated that _____ earns \$5000 a month and owns three (3) vehicles: a 2003 Ford Expedition, 2000 Dodge Dakota and a 2004 Harley Davidson motorcycle. Because Mr. _____ is the father of two (2) of Claimant's children, _____ and _____, his income and assets must be counted for _____ as well.
- 3) Ms. Gilbert stated that _____ was added to Claimant's case in May 2008 as a result of a Fraud Investigation that determined he was living in the home. Ms. Gilbert presented into evidence case comments detailing the findings of the investigation (D-1):

Rec'd FEFU [Front End Fraud Unit] report – FEFU received referral that AP [absent parent] is in home, investigation rec'd and statement obtained that AP is in the home/the home is owned by _____'s parent and two attempts were made via mail to verify however no response was rec'd, _____ is not cooperating w/ BCSE [Bureau of Child Support Enforcement] and reports that AP is paying her directly – she did not report that information to us for FS [Food Stamps] or Medicaid. Postal verification, school verification and utility information was rec'd indicating that client is living in residence. Client purchased new 2000 Dodge Dakota in 3/30/07 and listed his address as same. In 10/15/07, he renewed his drivers license w/same address.

- 4) Claimant testified that she has been divorced from _____ for seven (7) years. They have gotten back together and broken up again several times over the years. Their separations can last for months up to a year. They try to make it work for their children's sake.

Claimant stated their last separation was in early June 2008. Claimant had filed a Domestic Violence Petition against him which was eventually thrown out of court in August 2008. When not living with her, _____ lives with his mother or in his grandmother's vacant house.

_____ has been giving her \$200 a week for the past year as child support. She has no other income and no assets of her own. _____'s vehicles are in his name only. She does drive the Ford Expedition.

Claimant stated _____ is living there now, he moved back a few days ago. He was not living there in June, July or August. He did not come to visit or stay the night at all during that time as he was not allowed to because of the Domestic Violence Petition.

- 5) West Virginia Income Maintenance Manual § 9.21 A states:

The following individuals are required to be included (for WV Works and SCA):

- 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.
- 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 attend school, 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.

6) West Virginia Income Maintenance Manual § 15 Appendix C (I and J) states:

The total gross non-excluded income for the Assistance Group is compared to 100 % of the Federal Poverty Level (\$1721 for 4 people).

The asset limit is \$2000.

VIII. CONCLUSIONS OF LAW:

- 1) As dictated in policy, _____'s income and assets must count in the eligibility determination for SCA for _____ and _____ since they are blood related siblings and he is the father of _____.
- 2) However, according to Claimant's testimony, _____ was not living in the household during the time she applied for SCA. He left the household early June and did not return until September. The Department failed produce convincing evidence and testimony that _____ was living in Claimant's household at the time of the SCA application.
- 3) The Department incorrectly denied Claimant's application for SCA for excessive income and assets. _____'s assets should not have counted in determining eligibility for SCA for _____ and _____.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to deny Claimant's School Clothing Allowance application. Retroactive payments of School Clothing Allowance must be made to Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of October, 2008.

**Kristi Logan
State Hearing Officer**