



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

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Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

October 1, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 26, 2012. Your hearing request was based on the Department's denial of your West Virginia School Clothing Allowance (WVSCA) application due to excessive income.

In arriving at a decision, the Deputy Director 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 (WVSCA) program is based on current policy and regulations. Some of these regulations state Eligibility Determination Groups are determined in the same manner for WVSCA as they are for WV WORKS in Section 9.21. (West Virginia Income Maintenance Manual, Chapter 15, Appendix C) The policy in Section 9.21 states that caretaker relatives may choose to be included or excluded from an AG [Assistance Group]. (West Virginia Income Maintenance Manual §9.21)

Information submitted at your hearing reveals that you are the caretaker relative for your niece and that no one else resides in your household. You receive SSI and therefore are precluded from being included in the AG for WVSCA. As a result, your income is not counted when determining financial eligibility for WVSCA for your niece. The Department counted your income when it determined that you were not eligible for WVSCA.

It is the decision of the Deputy Director to **reverse** the Department's decision to deny your WVSCA application based on excessive income.

Sincerely,

Cheryl Henson  
Deputy Director  
State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Tera Pendleton, [REDACTED] DHHR

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

**IN RE:** -----,

**Claimant,**

v.

**Action Number: 12-BOR-1945**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondent.**

**DECISION OF DEPUTY DIRECTOR**

**I. INTRODUCTION:**

This is a report of the Deputy Director resulting from a hearing for ----- . This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This hearing was convened on September 26, 2012.

**II. PROGRAM PURPOSE:**

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 percent of the Federal Poverty Level.

**III. PARTICIPANTS:**

-----, Claimant  
Tera Pendleton, Department representative

Presiding at the hearing was Cheryl Henson, Deputy Director for the Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Department was correct to deny the Claimant's WVSCA application based on excessive income.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual, Chapter 9.21, and Chapter 15, Appendix C

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Case Comments from Department's computer system
- D-2 Unearned Income screens from Department's computer system
- D-3 Notice of Decision dated August 1, 2012
- D-4 Income Chart, Revised 8/29/12, Effective 10/01/12

**VII. FINDINGS OF FACT:**

- 1) The Claimant applied for WVSCA during July 2012 for her niece. She stated that the child's mother passed away some time ago and that the child has lived with her since that time. She confirmed that no one else lives in her household. She explained that she has general power-of-attorney for her niece. The parties agree that the household's countable income for July 2012 is \$1140.00, which is from various unearned income sources of the child's and her own.
- 2) The Department determined that the Claimant would not be included in the Assistance Group (AG), but that her income, minus SSI income also received by her, would be counted along with her niece's income in determining financial eligibility for WVSCA. When the Department compared the determined countable income for the household (\$1140.00) to the Income Chart for a one (1) person household (\$931.00), the application was denied due to excessive income.
- 3) The Department's representative, Tera Pendleton, is an Income Maintenance Specialist for the ██████████ County Department of Health and Human Resources (DHHR) office. She stated that the Department counts the income of everyone in the home, but only counts the children when determining AG composition for the WVSCA program. She stated that part of the Claimant's income (\$138.00), which is from Supplemental Security Income (SSI), was not counted; however, her other income from Social Security Disability Income (SSDI) was counted.
- 4) The Claimant did not dispute the Department's income calculations and agreed that her income is what the Department listed, but stated the Department should have considered the household to be a two (2) person AG if they were going to count her income in determining WVSCA eligibility. She stated that if the Department had compared the household's countable income (\$1140.00) to the Income Chart (D-4) for a two (2) person household, the application would be

approved. It should be noted that the income chart supplied as evidence (D-4) by the Department is not effective until October 2012; however, there is no change in income limits from the current chart.

- 5) West Virginia Income Maintenance Manual Chapter 15, Appendix C, states as follows:

#### ELIGIBILITY DETERMINATION GROUPS

The policy for Eligibility Determination Groups is the same as WV WORKS in Section 9.21.

#### INCOME

The total gross non-excluded income for the AG is compared to 100% FPL. See Chapter 10, Appendix A.

- 6) West Virginia Income Maintenance Manual, Chapter 9.21, states in pertinent part:

#### THE ASSISTANCE GROUP (AG)

##### Who Cannot Be Included

The following situations result in ineligibility for the individual who meets at least one of the following criteria.

- An individual, age 18 or over, who is eligible for SSI benefits, as determined by SSA. This includes individuals who are approved, but who have not yet received a payment and individuals for who benefits are temporarily suspended due to overpayment.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy for WVSCA specifies that WV WORKS policy for determining Eligibility Determination Groups is also used for determining Eligibility Determination Groups for WVSCA. This policy states that individuals age 18 or over, who are eligible for SSI benefits as determined by SSA, cannot be included in the AG. As such, the Claimant is not eligible to be part of the AG for WVSCA.
- 2) WVSCA policy specifies that the total non-excluded income for the AG is compared to 100% of the Federal Poverty Level (FPL) to determine eligibility. The Department compared the combined income of the Claimant (a non-AG member) and child in making its decision.
- 3) Based on the above, the Department was not correct in its decision to deny the Claimant's application for WVSCA.

**IX. DECISION:**

It is the decision of the Deputy Director to **reverse** the decision of the Department in denying the Claimant's WVSCA application for excessive income based on counting her income as well as the child's income.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_ Day of October 2012.**

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**Cheryl Henson  
Deputy Director,  
Board of Review**