



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704

Rocco S. Fucillo
Cabinet Secretary

October 19, 2012

Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 18, 2012. Your hearing request was based on the Department of Health and Human Resources' denial of a West Virginia School Clothing Allowance (WVSCA) application.

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 WVSCA program is based on current policy and regulations. Some of these regulations state that if the gross non-excluded income is equal to or greater than 100% FPL, the family is ineligible for WVSCA (West Virginia Income Maintenance Manual, Chapter 15, Appendix C, Section I), and that an SSI recipient, age 18 or over, cannot be included in the assistance group (West Virginia Income Maintenance Manual, Chapter 9.21.A.1).

The information submitted at your hearing revealed that your household is over the income limit for WVSCA based on a household size that correctly reflects the exclusion of adult SSI recipients required by policy.

It is the decision of the State Hearing Officer to **uphold** the Department's denial of your WVSCA application.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kathy Smith, Department Representative

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-1837

**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 19, 2012, 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 18, 2012, on a timely appeal filed July 25, 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% of the Federal Poverty Level.

III. PARTICIPANTS:

----, Claimant
Kathy Smith, Department representative

Presiding at the hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

All persons offering testimony were placed under oath.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct to deny the WVSCA application of the Claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 15, Appendix C; Chapter 9.21.A.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

No evidence submitted

VII. FINDINGS OF FACT:

- 1) Kathy Smith, a representative for the West Virginia Department of Health and Human Resources (Department), testified that the Claimant applied for WVSCA. The Department issued a denial notice to the Claimant, indicating that he was over income for the program. The Claimant submitted additional income verification and the Department issued a second denial notice to the Claimant based on a second income calculation. Ms. Smith testified that the household income for the Claimant was initially calculated as \$1469, then recalculated based on the additional income verification as \$1312, and that both amounts exceeded the income limit of \$1261 for the program.
- 2) The Department failed to provide notification letters, applicable policy, or any evidence for this hearing.
- 3) The West Virginia Income Maintenance Manual, Chapter 15, Appendix C, Section I, states that, for WVSCA, “[t]he total gross non-excluded income for the AG is compared to 100% FPL. See Chapter 10, Appendix A,” and further states that if income exceeds this limit, the family is ineligible for WVSCA. Appendix A of Chapter 10 of the West Virginia Income Maintenance Manual is a table which notes that 100% of the Federal Poverty Level (FPL) for two persons is \$1261.
- 4) The Claimant testified that the Department counted his wife’s income, but did not include her in the household or assistance group (AG). He testified that his income varies and he has received WVSCA in the past when his income was higher. He provided no income verification for the period in question, and did not propose a different income calculation for the period in question.
- 5) The West Virginia Income Maintenance Manual, Chapter 15, Appendix C, Section H, states that, for WVSCA, “[t]he policy for Eligibility Determination Groups is the same

as WV WORKS in Section 9.21.” At Chapter 9.21.A.1, the West Virginia Income Maintenance Manual provides a list of individuals that must be included in the AG for WV WORKS and WVSCA, and prefaces it by stating, “[a]lthough 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.” Ms. Smith testified that this was the basis of excluding the Claimant’s wife from the AG and determining the \$1261 income limit for the Claimant’s household.

VIII. CONCLUSIONS OF LAW:

- 1) Policy for WVSCA mirrors that of the WV WORKS program, which excludes adult recipients of SSI from the count of individuals in an AG. The Department was correct to exclude an adult recipient of SSI in its determination of the Claimant’s AG size.
- 2) Policy for WVSCA provides an income limit for program eligibility based on AG size and 100% of the FPL. There was no dispute of the Department’s income calculations for the Claimant’s household, but instead simply a proposal that the Claimant should receive the benefit because he had received it in the past. The Department was correct to deny WVSCA to the Claimant based on excessive income for his countable household size.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny WVSCA to the Claimant.

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.

**Todd Thornton
State Hearing Officer**