



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 22, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 21, 2006. Your hearing request was based on the Department of Health and Human Resources' action to terminate cash assistance and Medicaid benefits provided through the WV WORKS Program and reduce your Food Stamp benefits.

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 WV WORKS Program is based on current policy and regulations. Some of these regulations state that in order to receive cash assistance, AFDC/U Medicaid or AFDC/U-Related Medicaid as a dependent child, the child must be living with a specified relative in a place established as the relative's home. 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. {West Virginia Income Maintenance Manual, Chapter 15.2 & 9.1}

The information which was submitted at your hearing reveals that the Family Court in [REDACTED] County has ORDERED that your child's mother is the primary custodian and the child is in her care more than 50% of the time.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in terminating your benefits received through the WV WORKS Program (cash assistance & Medicaid) and reducing your Food Stamp benefits.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Denese Lamp, FSS, DHHR

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

_____,
Claimant,

v.

**Action Number: 06-BOR-2994, 06-BOR 2995
 & 06-BOR-2996**

**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 December 22, 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 December 21, 2006 on a timely appeal filed September 5, 2006.

II. PROGRAM PURPOSE:

The program entitled WV WORKS is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

WV Works was created by Senate Bill 140, Article 9 of the West Virginia Code and the Temporary Assistance to Needy Families Block Grant, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The purpose of WV Works is to provide assistance to needy families with children so they can be cared for in their own home, reduce dependency by promoting job preparation, work and marriage. The goals of WV Works are to achieve more efficient and effective use of public assistance funds, reduce dependence on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

_____, Claimant
Denese Lamp, FSS, DHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department was correct in its action to terminate the Claimant's cash assistance & Medicaid benefits through the WV WORKS Program and reduce the Claimant's Food Stamp benefits.

It should be noted that the Claimant's child continues to receive Food Stamp and Medicaid benefits in his mother's AG.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 2.2, 9.1, 9.21, 9.7 & 10.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Notice of Decision dated 8/16/06

D-2 [REDACTED] County Family Court Order (Civil Action # [REDACTED] entered on [REDACTED])

D-3 WVIMM, Chapter 2.2, 9.1, 9.21, & 9.7

VII. FINDINGS OF FACT:

- 1) On or about August 16, 2006, the Claimant was notified via a Notice of Decision (Exhibit D-1) that his WV WORKS benefits would stop after August 2006. This notice goes on to indicate that Medicaid benefits will close and Food Stamp benefits will be reduced from \$111 to \$103 per month. The household's current living situation prevents eligibility for this assistance (cash assistance and Medicaid) and Food Stamp benefits were reduced because "the number of people receiving this benefit has decreased."

- 2) The Department's representative presented Exhibit D-2 (Family Court Order from [REDACTED] County, West Virginia, Civil Action #_____ entered on 7/12/05) and cited #1 under the CONCLUSIONS OF LAW, which states – The Petitioner's home (the child's biological mother) shall be the residential home of the minor child(ren) born of the parties, namely: (the child's name) and shall have the primary care and control of the child(ren). CONCLUSION OF LAW #2 indicates that the Claimant shall get the child from Saturday 1:00 P.M. until Tuesday 9:00 a.m. The number of hours in a week equal (7 days x 24 hours = 168 hours) and according to the Family Court Order, the Claimant only has the child 68 hours a week (40% of the time).
- 3) The Department's representative testified that the Claimant's child is currently receiving Food Stamp and Medicaid benefits through his biological mother's case in accordance with the Family Court Order (Exhibit D-2) and current policy (Exhibit D-3).
- 4) The Claimant testified that there was a typographical error in the court order and that the return time of the child should have read Tuesday at 9:00 p.m. (not 9:00 a.m.). He also indicated that his child eats more meals at his home and while he understands why the action was taken by the Department, he thinks the policy is unfair.
- 5) According to the West Virginia Income Maintenance Manual, Chapter 15.2, in order to receive cash assistance, AFDC/U Medicaid or AFDC/U-Related Medicaid as a dependent child, the child must be living with a specified relative in a place established as the relative's (i.e. mother or father) home.
- 6) The West Virginia Income Maintenance Manual, Chapter 9.21(A) - (WV WORKS ELIGIBILITY DETERMINATION GROUPS) states – 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.
- 7) West Virginia Income Maintenance Manual, Chapter 9.1.A.1 – {FOOD STAMP ELIGIBILITY DETERMINATION GROUPS – THE ASSISTANCE GROUP (AG)}: The Food Stamp AG must include all eligibility individual who both live together and purchase and prepare their meals together. An individual cannot be a member of more than one Food Stamp AG in any month.
- 8) Policy found in Chapter 9.1.A.1.b(1) of the West Virginia Income Maintenance Manual {FOOD STAMP ELIGIBILITY DETERMINATION GROUPS – THE ASSISTANCE GROUP (AG)} addresses Individuals or Groups of Individuals Living With Others and states that a group of individuals who live together, and for whom food is customarily purchased and prepared together, is an AG. Customarily is used to mean over 50% of meals on a monthly basis.
 - Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent.

In the instance of shared custody, when the child is legally considered to reside with each parent equal amounts of time (50/50), the parents must decide where the child “lives.” If no one is receiving any benefits from the Department for the child, it is assumed that the living arrangements are not questionable and the child is added to the AG that wished to add him. If the child is already listed in another AG or the other parent wishes to add the child to his AG, the parents must agree as to where the child “lives” and, ultimately, to which AG he is added. Where the child receives the majority of his meals is not relevant.

- 9) West Virginia Income Maintenance Manual, Chapter 9.7.A&B, addresses Medicaid benefits and who should be included in the assistance group (AG). This section of policy indicates that the AG will consist of the child and child’s mother/father who is living in the home. Section 9.7(B) further explains the following - NOTE: “In cases involving joint custody of a child when the child resides with each parent 50% of the time, the income of both parents is counted for the child. In joint custody cases involving more time with one parent than the other, only the income of the parent with whom the child resides the majority of the time, is counted.
- 10) West Virginia Income Maintenance Manual, Chapter 10.4 contains policy regarding income disregards and deductions, and explains the computation for eligibility of Food Stamp benefits. It also states: To determine the coupon allotment, find the countable monthly income and number in the benefit group.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that an Assistance Group (AG) for the WV WORKS, Food Stamp & Medicaid programs consists of the individuals who reside in the home who must be included. In joint custody cases, the child is included in the custodial parent’s AG. The custodial parent is the one with whom the child lives more than 50% of the time in a given month. Children must be included in the AG of the parent with whom they reside (for all programs).
- 2) The court order indicates that the Claimant’s child resides with his biological mother more than 50% of the time. While the Claimant indicated that the visitation schedule was not strictly followed and a new order should be forthcoming, the Department cannot challenge the authority of the Family Court regarding the custodial arrangement. Based on the evidence, the Department has correctly determined that the Claimant cannot receive cash assistance or Medicaid benefits through the WV WORKS Program for his child. Additionally, Food Stamp benefits were correctly reduced when the child was removed from the Claimant’s AG.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, I am ruling to **uphold** the action of the Department in terminating your benefits received through the WV WORKS Program (cash assistance & Medicaid for your child) and reducing your Food Stamp benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of December, 2006.

**Thomas E. Arnett
State Hearing Officer**