



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
PO Box 6165
Wheeling, WV 26003

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 15, 2006

Dear Ms. _____

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 6, 2006. Your hearing was based on the Department of Health and Human Resources' action to establish and collect a cash assistance overpayment in the amount of \$2819.

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 Cash Assistance is based on current policy and regulations. Some of these regulations state as follows: According to Income Maintenance Manual section 15.2 a child must be under the age of 18 and living with a specified relative in a place established as the relative's home. One of the definitions of a specified relative is a blood relative such as brother, sisters, grandparents, great-grandparents, etc.

The information submitted at your hearing revealed: An application was filed by you in April 2004 for cash assistance benefits for your grandson (child of your son). Your application was approved for benefits for the time period of April 2004 through November 2004 and again in September through October 2006. The Bureau of Child Support Enforcement notified the Income Maintenance staff in September 2006 that it had been determined that your son had not signed legal paternity affidavits for the child and action was taken to close the cash assistance benefits you were receiving for the child. The decision to close the benefits was based on the fact that a specified relative status could not be established for you. As a result of this decision a claim was established against your household in the amount of \$2819. Evidence provided by you during this hearing revealed that a Declaration of Paternity Affidavit was signed by your son on September 25, 2006 and the child's mother on September 26, 2006. Further testimony revealed that this form has been filed with the Bureau of Vital Statistics and a revised birth certificate is forthcoming.

It is the decision of the State Hearings Officer to **REVERSE** the action of the Department to establish a cash assistance claim against your household as evidence shows you do have a specified relative status to the child in question.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: State Board of Review

Smith, DHHR

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

_____,
Claimant

v.

Action Number: 06-BOR-3128

**West Virginia Department of Health
And Human Resources,
Respondent**

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a Fair Hearing concluded on December 6, 2006 for Ms. _____. 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 6, 2006 on a timely appeal filed October 13, 2006.

II. PROGRAM PURPOSE:

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
_____ – Child's Maternal Aunt
Teresa Smith – DHHR representative

Presiding at the Hearing was Melissa Hastings, 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 their decision to establish a cash assistance claim against the claimant.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 15.2 and WV Income Maintenance Manual Section 20.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 Case comments dated 09/20/06 through 09/22/06
- DHS-2a Cash Assistance Claim Determination (ESCU5) for time period April 2004 through November 2004
- DHS-2b Cash Assistance Claim Determination (ESCU5) for time period September 2006 through October 2006
- DHS-3a West Virginia Income Maintenance Manual section 15.2.
- DHS-3b West Virginia Income Maintenance Manual section 20.3
- DHS-4 Notification of Cash assistance overpayment addressed to claimant dated 09/26/06
- DHS-5 Hearing Summary dated 11/28/06

Claimants' Exhibits:

- C-1 State of West Virginia Declaration of Paternity Affidavit signed by _____ on 09/26/06 and signed by _____ on 09/25/06 with notary seal.
- C-2 Letter dated 12/01/06 from _____ Principal of _____ Elementary School in _____, WV

VII. FINDINGS OF FACT:

- 1) Evidence and testimony indicate that Claimant applied and was approved for cash assistance for her grandson in April 2004. The Claimant indicated that her son was the father of the child.
- 2) Case comments dated 09/20/06 (**DHS1**) indicate that the Bureau of Child Support Enforcement notified the Income Maintenance staff that Claimant's son had not signed legal paternity affidavits for the child; therefore paternity of the child was not established. As a result, the Claimant was not considered the legal grandparent to the child and the cash assistance case was closed and a referral completed for repayment.
- 3) West Virginia Income Maintenance Manual section 15.2 B (**DHS3**) states:

A relative of the father of a child born out-of-wedlock can qualify as a specified relative only if the child's paternity has been established.
- 4) WV Income Maintenance Manual Section 15.2 (**DHS3**) also states:

In order to receive cash assistance as a dependent child a child must be under the age of 18 and must be living with a specified relative in a place established as the relative's home.

- 5) Repayment Investigator, Teresa Smith, prepared Cash Assistance Claim Determination forms ESCU5 (**DHS2a & b**) indicating that Claimant was issued cash assistance benefits from April 2004 through November 2004 and September 2006 through October 2006 totaling \$2819.
- 6) Notification of Cash Assistance Overpayment (**DHS4**) was issued to the Claimant on September 26, 2006 advising her of the claim established against her household.
- 7) Testimony received from the maternal aunt of the child indicates that she was present at the time of the child's birth. Her testimony indicates that the child's father and mother signed the forms for the child's birth certificate; however, the child's mother decided afterwards that she did not care for the middle name for the child that was placed on the forms. The child's mother destroyed the original form and completed a new one with a corrected middle name. The child's father was not present when the second set of forms was complete; therefore his name was not placed on the birth certificate.
- 8) Claimant's testimony indicates that she has had the child in her care practically since the time of his birth. She always understood that her son had acknowledged paternity and had no reason to question it. She was not aware of the problem with paternity until notified by the agency of the lack of legal acknowledgment of paternity.
- 9) A notarized State of West Virginia Declaration of Paternity Affidavit (**C1**) signed by both the child's mother and father indicates that paternity of the child was legally established in September 2006. Testimony received from the department's representative indicates that the Bureau of Child Support Enforcement has acknowledged receiving this document and has submitted it to the Bureau of Vital Statistics for a revised birth certificate to be issued.

VIII. CONCLUSIONS OF LAW:

- 1) WV Income Maintenance Manual Section 15.2 is clear that an individual can only received cash assistance benefits for a child if they meet the requirements of being a specified relative. The definition of specified relative within this policy indicates that an individual must be a **Blood Relative**.
- 2) Evidence is clear that at the time of application and receipt of cash assistance benefits in April 2004 through November 2004 and September through October 2006, the Claimant's status as the legal grandparent to the child was not established.
- 3) Evidence is clear that Claimant was not aware that the legal paternity of the child had not been established until advised by the agency of the issue. Once advised of the

problem, action was taken by the child's father and mother to complete appropriate forms to legally establish the child's paternity which established the Claimant as a blood relative back to the date of birth.

IX. DECISION:

It is the decision of the State Hearing Officer to **REVERSE** the Department's action to establish and collect the proposed cash assistance claim against the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th Day of December 2006.

Melissa Hastings
State Hearing Officer