



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 7, 2006

Ms. _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 31, 2006. Your hearing request was based on the Department of Health and Human Resources' action to terminate your West Virginia Works Benefits.

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 West Virginia Works Program is based on current policy and regulations. One of these regulations states in part,

The following individuals are required to be included: 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. (West Virginia Income Maintenance Manual Section 9.21 (A) (1) Who Must Be Included).

The information submitted at your hearing revealed: You moved into your mother's home where another of your children lived.

It is the decision of the State Hearings Officer to uphold the decision of the Department to terminate your case.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Terra Hoff, Family Support Specialist

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

_____,
Claimant,

v.

Action Number: 05-BOR-6967

**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 February 7, 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 originally scheduled on December 13, 2005 on a timely appeal filed November 17, 2005. Ms. _____ requested to reschedule the hearing. The hearing finally convened on January 31, 2006.

It should be noted here that the claimant's benefits have not been continued pending a hearing decision. A pre-hearing conference was not held between the parties prior to the hearing and; Ms. _____ did not have legal representation.

II. PROGRAM PURPOSE:

The Program entitled West Virginia 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
Terra Hoff, Family Support Specialist – _____ DHHR Office

Presiding at the Hearing was Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Did the Department correctly determine that Ms. _____'s child should be included in her West Virginia Works case?

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 9.21 (A) (1) Who Must Be Included

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of Denial Letter dated November 2, 2005
- D-2 West Virginia Income Maintenance Manual Section 9.21 (A) (1) Who Must Be Included
- D-3 West Virginia Income Maintenance Manual Section 10.3 Income (1) Unearned
- D-4 Copy of Food Stamp Income Payroll for Child Support
- D-5 Miscellaneous Hearing Documents

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1) This issue involves the closure of the West Virginia Works case for Ms. _____. Ms. _____ and her child moved into her mother's household. Ms. _____'s mother was providing care and receiving child support for another of Ms. _____'s children. The Department closed the case based upon the following facts: (1) All blood relatives must be included in the same benefit group and; (2) The unearned income received from child support exceeds the income guidelines for the West Virginia Works Program.

2) Ms. _____ testified that the child support is court ordered and received by her mother on behalf of her child. She does not have access to or, receive any of the money.

3) Mrs. Hoff agreed that the money is court ordered but, the policy states that blood relatives cannot be separated according to the West Virginia Income Maintenance Manual Section 9.21 (A) (1) Who Must Be Included. Mrs. Hoff further testified that she was instructed by her superiors not to introduce the Child Support Court Order, unless the grand mother gave her permission to do so. The Department could not obtain permission from the grand mother to introduce the court order. At this point, the State Hearing Officer advised Ms. _____ of the “Hearsay Rule.” She could object to any references to the child support court order or her mother and; it would not be considered by the State Hearing Officer in his decision. Ms. _____ objected and, Exhibits 3 & 4 were excluded from consideration.

4) It should be noted here that Ms. _____ had a copy of the child support court order at the hearing. The State Hearing Officer requested a copy but later rescinded his request after explaining the “Hearsay Rule.”

5) The only remaining issue is that, Ms. _____ moved into her mother’s home where another of her children lived. According to the West Virginia Income Maintenance Manual Section 9.21 (A) (1) Who Must Be Included states in part:

The following individuals are required to be included: 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.

6) The Department was correct to terminate the case of Ms. _____ based upon the blood relationship of the household.

7) West Virginia Income Maintenance Manual Section 9.21 (A) (1) Who Must Be Included:

NOTE: Whether or not an individual has earned or unearned income sufficient to meet his own needs, or the needs of his dependents, is not a factor to consider when determining if the individual is required to be included in the AG.

NOTE: Although 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. See item 3 below.

The following individuals are required to be included:

- 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.

EXAMPLE: Two children who have the same mother but different fathers live with the paternal grandparents of child A. The children are blood-related and would normally be required to be included in the same AG. However, the grandparents of child A are not specified relatives of child B. Therefore, child B is not eligible for WV WORKS.

- 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 the custodial parent is.

Parents who 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.

NOTE: When the parent(s) of the unemancipated minor parent is included, the blood-related siblings of the minor parent are included. The spouse of the parent and any of his dependent children who are blood-related siblings to each other must also be included.

NOTE: When an individual is required to be in two or more AGs, the AGs must be combined.

VIII. CONCLUSIONS OF LAW:

- 1) West Virginia Income Maintenance Manual Section 9.21 (A) (1) Who Must Be Included states in part:

The following individuals are required to be included: 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.

- 2) While Ms. _____ is living with her mother, all blood related children must be considered for inclusion in her West Virginia Works Benefit Group.

IX. DECISION:

It is the decision of this State Hearing Officer to uphold the action of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of February, 2006.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer