



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

July 20, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 17, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for WV WORKS cash assistance 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 West Virginia Works Program is based on current policy and regulations. In order to receive cash assistance as a specified relative, the applicant must verify that they are a blood relative. When a child is born out-of-wedlock in the State of West Virginia, policy requires that a specified relative of the father can qualify only if the child's paternity has been established. Policy further stipulates that paternity can only be established if both parents have signed the Declaration of Paternity Affidavit, the original or amended birth certificate on record with Vital Statistics shows the father's name, or a court of law has determined paternity. (West Virginia Income Maintenance Manual § 15.2)

The information submitted at your hearing reveals that you were not eligible to receive WV WORKS cash assistance benefits based on the specified relative provision as paternity of the infant child for whom you were applying has not been legally established.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your April 24, 2007 application for WV WORKS cash assistance benefits.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Nancy DeBee, FSS, DHHR

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

_____,

Claimant,

v.

Action Number: 07-BOR-1436

**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 July 20, 2007 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 hearing convened on July 17, 2007 on a timely appeal filed May 21, 2007.

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
Nancy DeBee, 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 deny the Claimant's application for cash assistance through the WV WORKS Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 15.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Birth Certificate for the infant child in question
- D-2 WVIMM Chapter 15.2
- D-3 Notice of Decision dated 5/8/07

Claimant's Exhibits:

- C-1 Paternity testing results from LabCorp dated March 2, 2007
- C-2 Agreement to transfer Temporary Guardianship and Custody dated December 12, 2006
- C-3 Declaration of Paternity Affidavit – Signed by [REDACTED] on 5/15/07
- C-4 Durable General Power of Attorney

VII. FINDINGS OF FACT:

- 1) In response to an April 24, 2007 application for cash assistance through the WV WORKS Program, the Claimant was notified via a Notice of Decision (Exhibit D-3) dated May 8, 2007 that her application was denied. This notice states, in pertinent part:

WV WORKS

1. Action: Your 4/24/07 application for Cash Assistance has been DENIED.
2. Reason: There is no eligible child in the home.

- 2) The Department presented evidence to indicate that the Claimant applied for cash assistance benefits for an infant child born out-of-wedlock under the specified relative provision in the WV WORKS Program. The Department purported that the specified relative requirements provided in Chapter 15.2 of the West Virginia Income Maintenance Manual (WVIMM) were not met at the time of the April 24, 2007 application.
- 3) The Department's representative cited Exhibit D-1, the birth certificate for the infant child, which bares only the child's mother's name. Exhibit C-1 (LabCorp paternity testing results) states - "The alleged father [REDACTED] cannot be excluded as the biological father of the child. . ." However, paternity testing results do not satisfy policy requirements. The Department's representative further testified that Exhibit C-3 (Declaration of Paternity Affidavit) was not available at the time of the April 24, 2007 application and it does not include the signature of the biological mother as required by policy. Lastly, paternity has not been established in a court of law. The Department concluded that paternity has not been established by any of these procedures and that is why the application was denied.
- 4) The Claimant contends that Exhibit C-1 (LabCorp paternity testing results dated March 2, 2007) verifies a blood relationship between her son and the infant child and that her son, _____, signed a Declaration of Paternity Affidavit on May 15, 2007 (Exhibit C-3). The Claimant acknowledged that the biological mother did not sign the Declaration of Paternity Affidavit. The Claimant submitted Exhibit C-2 to show that she has temporary custody of the infant child and Exhibit C-4 verifies that she has durable general power of attorney for her son who is presently incarcerated. The Claimant further testified that a hearing to establish paternity is scheduled to convene before the family court judge on July 23, 2007. The Claimant contends that Exhibits C-1 and C-3 should be sufficient to satisfy the specified relative requirement to receive WV WORKS cash assistance.
- 5) West Virginia Income Maintenance Manual, Chapter 15.2.B (*LIVING WITH A SPECIFIED RELATIVE (WV WORKS)*) – states that the child must be living with a specified relative in a place established as the relative's home. The applicable section for a specified relative in this case is as follows:

- Blood relative: Those of half-blood, brothers or sisters, grandparents, great-grandparents, great-great grandparents, great-great-great grandparents, uncles or aunts, great-uncles or aunts, great-great uncles or aunts, nephews or nieces, first cousins, first cousins once removed.

Note: Legal custody or guardianship of a child does not, in itself, qualify a person as a specified relative. 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.

- 6) West Virginia Income Maintenance Manual, Chapter 15.2.C.2.b(4)(b) –*Establishment of a Deprivation Factor / Establishment of Paternity* states for children born in West Virginia, paternity is considered legally established when any one of the following conditions exist: (only those conditions relevant to this case have been included)

- Both parents have signed a Declaration of paternity Affidavit.
- The original or amended birth certificate on record with Vital Statistics shows the father's name. It is not necessary for the child's last name to be the same as the father's.
- A court of law has determined paternity
- The child was born to a common-law marriage in a state that recognizes common-law marriage.

West Virginia does not have a provision in State law regarding Common-law marriage

VIII. CONCLUSIONS OF LAW:

- 1) The regulations that govern the WV WORKS cash assistance program require individuals who apply under the specified relative provision to verify blood relative status. When a child is born out-of-wedlock in the State of West Virginia, policy requires that a specified relative of the father can qualify only if the child's paternity has been established. Policy further stipulates that paternity can only be established if both parents have signed the Declaration of Paternity Affidavit, the original or amended birth certificate on record with Vital Statistics shows the father's name or a court of law has determined paternity.
- 2) The evidence submitted in this case reveals that paternity has not been established in accordance with WV WORKS policy requirements. The father's name is not included on the child's birth certificate, the Declaration of Paternity Affidavit was not available at the time of application or signed by the mother and paternity has not been determined by a court of law.

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 Agency in denying the Claimant's April 24, 2007 application for WV WORKS cash assistance benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of July 2007.

**Thomas E. Arnett
State Hearing Officer**