



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

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

September 24, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 22, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your West Virginia Works Cash Assistance by including you and your children in the assistance group.

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. Some of these regulations state that the Assistance Group (AG) must include all minor, dependent, blood-related siblings who live in the same household with a specified relative, along with the parent who lives with the children. When the AG includes a parent, his children and other children for whom the parent is a specified relative, the parent is required to be included and the Caretaker Relative Option is not appropriate. A specified relative includes a blood related uncle. (West Virginia Income Maintenance Manual § 1.25 and 15.2.B)

The information submitted at your hearing demonstrates that your household includes yourself, your two children and your niece, and that one of your children is your niece's half sister. Because of this blood relationship, you and your children must be included in the AG for WV WORKS.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to include you and your children in the WV WORKS AG with your niece.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Gary W. Keen, [REDACTED] DHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR-1577

**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 September 22, 2009 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 September 22, 2009 on a timely appeal filed July 24, 2009.

II. PROGRAM PURPOSE:

WV WORKS

The purpose of WV WORKS is to help economically dependent, at-risk families become self-supporting. It is a work-oriented, performance-based, time-limited Program that emphasizes employment and personal responsibility. The goals of WV WORKS are to achieve more efficient and effective use of public assistance funds, reduce dependency on public programs by promoting self-sufficiency, and structure assistance to emphasize employment and personal responsibility.

III. PARTICIPANTS:

-----, Claimant, representing himself
Gary W. Keen, Department Representative

Presiding at the Hearing was Cheryl Henson, 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 decision to include the Claimant and his children in the AG for WV WORKS cash assistance.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 1.25, 9.21 & 15.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notification letter dated May 27, 2009
- D-2 WV Income Maintenance Manual Section 9.21

Claimant's Exhibits:

- C-1 WV Income Maintenance Manual Section 9.21, page 66

VII. FINDINGS OF FACT:

- 1) The Claimant was receiving WV WORKS cash assistance for himself, his two children, and a niece on May 27, 2009 when the Department sent him a notification letter (D-1) which included the following pertinent information:

ACTION: Your WV WORKS/WVEAP will decrease from \$234.00 to 79.00 effective 07/01/09.

REASON: A second sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC).

This sanction is being applied due to the failure of ----- to meet the terms of the Personal Responsibility Contract by FAILING TO ATTEND AN ASSIGNED ACTIVITY.

- 2) The Claimant requested a hearing on July 24, 2009. He also reports that he has previously requested a hearing on this matter although there is no record. The Department does not dispute that the Claimant has had an ongoing issue in regard to AG composition since his case was approved and may have asked for hearings prior to this request. The Claimant contends that he originally elected to receive WV WORKS cash assistance for his niece only, and does not wish to receive the assistance for himself or his two children. He contends that although the Department has chosen to include them in the AG, he is eligible to receive the assistance as a caretaker relative, and has the right to choose whether to include himself and his children.

3) The Department contends that the Claimant and his children must be included because his niece and his daughter are half-sisters. They have the same mother and are blood related. The Claimant does not dispute this information.

4) West Virginia Income Maintenance Manual Section 9.21 states in pertinent part:

WV WORKS ELIGIBILITY DETERMINATION GROUPS

A. THE ASSISTANCE GROUP (AG)

1. Who Must Be Included

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.
- The parent(s) of the child(ren) identified above when the parent(s) lives with the child(ren)...

5) West Virginia Income Maintenance Manual Section 15.2 states in pertinent part:

B. LIVING WITH A SPECIFIED RELATIVE (WV WORKS, AFDC Medicaid, AFDC-Related Medicaid)

The child must be living with a specified relative in a place established as the relative's home. A specified relative is defined below.

- Natural or adoptive parents.
- 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.

6) West Virginia Income Maintenance Manual 1.25 states in pertinent part:

Caretaker Relative Option

NOTE: When a parent(s) is included with his own child(ren), the OFS-WVW-10 must not be signed. When the AG includes a parent(s), his child(ren) and other children for whom the parent is a specified relative, the parent is required to be included and form OFS-WVW-10 must not be signed. The form is used only when a caretaker relative receives cash assistance only for children to whom he is not a parent.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that for WV WORKS cash assistance, all minor, dependent, blood related siblings living together must be included in the AG, along with their parents. Policy also provides that, in some instances, a specified relative may choose to exclude himself and his children from the AG when applying for a qualifying relative such as a niece. An uncle is considered to meet the guidelines to be considered a specified relative.
- 2) The evidence reveals that the Claimant is living in a household which includes himself, his two children, and his niece. His niece and one of his children are half-sisters having the same mother.
- 3) The Claimant does not meet the criteria to choose to be excluded from the WV WORKS cash assistance and receive benefits for just his niece. His niece and his daughter are blood related siblings.
- 4) Policy is clear in that blood related siblings must be included in the same AG for WV WORKS, and for this reason the entire household must be included in the AG for WV WORKS cash assistance.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the ruling of the State Hearings Office to **uphold** the Agency's decision to include the Claimant and his children in the WV WORKS cash assistance case.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of September, 2009

**Cheryl Henson
State Hearing Officer**