



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Patsy Hardy, FACHE, MSN, MBA
Cabinet Secretary

October 21, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 15, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your WV WORKS benefits based on child custody issues.

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 cases of joint custody, 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 who is the custodial parent. (West Virginia Income Maintenance Manual Section 9.21)

Information submitted at the hearing demonstrates that you are not the primary custodial parent of your son.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your WV WORKS benefits.

Sincerely,

Pamela L. Hinzman
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: 09-BOR-989

**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 October 21, 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 was convened on October 15, 2009 on a timely appeal filed March 30, 2009. The hearing was originally scheduled for May 20, 2009 and rescheduled for June 10, 2009, but was continued on both dates at the request of the Department. The hearing was subsequently scheduled for June 23, 2009 and August 25, 2009, but was continued at the request of the Claimant.

It should be noted that the Claimant's benefits have been continued pending the hearing decision.

II. PROGRAM PURPOSE:

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
Denese Lamp, Family Support Specialist, DHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its proposal to terminate the Claimant's WV WORKS benefits based on failure to establish primary custody of a minor child.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 9.21, A, 1 and 4.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing information
- D-2 West Virginia Income Maintenance Manual Sections 9.21, A, 1 and 4.2
- D-3 Notice of Decision dated March 18, 2009
- D-4 Affidavit of Physical Custody dated March 5, 2009
- D-5 Notice from Family Court of ██████████ County dated March 6, 2009
- D-6 Civil Case Information Statement and Petition for Modification dated May 27, 2008
- D-7 Calendars specifying child custody dates from January 2009 through July 2009
- D-8 Parenting Plan dated May 27, 2008 and Orders of Modification of Parenting Plan dated December 10, 2008 and January 19, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant and his minor son are recipients of WV WORKS benefits.
- 2) The Department sent the Claimant a Notice of Decision dated March 18, 2009 (D-3) which states, in pertinent part:

ACTION: Your WEST VIRGINIA WORKS benefits will stop.
Your last benefits will be received in March 2009.

REASON: Court documents verify that you are not the primary custodial parent.

- 3) The Family Support Specialist testified that the Claimant filed an Affidavit of Physical Custody (D-4) in March 2009, indicating that he has physical custody of his son. As a result, the Department's Bureau for Child Support Enforcement sent the child's mother a notice (D-5) indicating that the Department would seek child support from her and redirect the payments to the Claimant. Upon further examination, the Department determined that the Claimant does not have complete care and control of the child and the parents continue to participate in a joint 50/50 custody arrangement. The Family Support Specialist referred to the Parenting Plan (D-8) which addresses the joint custody agreement and indicates that the parents may claim the child for income tax purposes on alternate years. Based on the Parenting Plan, the Family Support Specialist devised calendars (D-7) and determined that both parents had the child for an equal number of days from January 2009 through March 2009. Exhibit D-7 suggests that the 50/50 pattern has remained consistent through July 2009.
- 4) The Claimant testified that his custody claim was challenged because he is the father of the child, and he believes the child's mother would not have been questioned about the arrangement if she had reported having physical custody. He stated that the child's mother works full-time and he often cares for his son at undocumented times. He contended that the child's mother would not agree to sign a statement indicating that he has the child 51 percent of the time as she would perceive such a request as an aggressive move on his part. The Claimant testified that he had petitioned the court to designate a custodial parent based on the need for this specification in certain situations.
- 5) West Virginia Income Maintenance Manual Section 9.21, A, 1 (D-2) addresses who must be included in the WV WORKS Assistance Group with the child:
 - The parent(s) of the child(ren) identified above when the parent(s) live with the child(ren), unless they fall under any of the categories of who may not be included listed in Item 3 of this section.

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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that in cases of joint custody, only the custodial parent can be included in the WV WORKS Assistance Group. If a child lives with each parent exactly 50 percent of the time, the parents must determine the custodial parent.
- 2) Based on information provided during the hearing, the Claimant shares 50/50 custody of his son with the child's mother. The Claimant testified that the child's mother would refuse to sign a statement indicating that he cares for the child 51 percent of the time.

3) As the Claimant cannot establish that he is the child's custodial parent, the Department has correctly proposed the termination of WV WORKS benefits.

IX. DECISION:

The Department's proposal to terminate the Claimant's WV WORKS benefits is **upheld**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of October, 2009.

**Pamela L. Hinzman
State Hearing Officer**