



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Jim Justice  
Governor

Bill J. Crouch  
Cabinet Secretary

April 19, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 17-BOR-1525

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Debra Roberts, [REDACTED] County DHHR

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

██████████,

**Appellant,**

v.

**Action Number: 17-BOR-1525**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**INTRODUCTION**

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on April 18, 2017, on an appeal filed March 22, 2017.

The matter before the Hearing Officer arises from the February 7, 2017 decision by the Respondent to terminate the Appellant's WV WORKS cash assistance benefits.

At the hearing, the Respondent appeared by Marvin Walker, Family Support Supervisor. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, the Appellant's daughter. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Hearing Request Notification
- D-2 Hearing Request received March 22, 2017
- D-3 Notice of Decision dated February 7, 2017
- D-4 West Virginia Income Maintenance Manual §§16.3(A) and 9.21(A)
- D-5 Second Amended Modification Order of the ██████████ County, West Virginia, Family Court dated August 2, 2016
- D-6 Case Benefit Summary Screen Prints
- D-7 Case Comments from February 2002 through March 2017
- D-8 Department's Summary

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

### **FINDINGS OF FACT**

- 1) The Appellant was a recipient of WV WORKS cash assistance benefits for herself and her daughter, [REDACTED] (Exhibit D-6).
- 2) On or around February 1, 2017, the Respondent received a Second Amended Modification Order of the [REDACTED] County, West Virginia, Family Court dated August 2, 2016 (Exhibit D-5).
- 3) According to the Order, the Appellant and her ex-husband were awarded shared parenting of their daughter, with [REDACTED] spending six (6) consecutive days and nights with the Appellant, and spending eight (8) consecutive days and nights with her father.
- 4) The Appellant was named the primary residential parent of [REDACTED]
- 5) The Respondent notified the Appellant on February 7, 2017, that her WV WORKS benefits would be terminated effective March 1, 2017, due to [REDACTED] current living situation (Exhibit D-3).
- 6) The Appellant contested the closure of the WV WORKS benefit.

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual §9.21(A)(1) states that in cases of joint custody, only the custodial parent is included in the WV WORKS benefit. 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.

### **DISCUSSION**

Policy stipulates that in the cases of joint custody, only the custodial parent may receive WV WORKS benefits. Policy defines a custodial parent as the parent with whom the child resides more than 50% of the time in a month.

The Appellant contended that she was named primary residential parent by the Family Court of [REDACTED] County, and therefore is the custodial parent of [REDACTED]. However, the Order awards [REDACTED] father more time, eight consecutive days to the Appellant's six consecutive days, with [REDACTED] and is thereby the custodial parent of [REDACTED].

Regardless of the Appellant's title as primary residential parent, policy defines the custodial parent as the parent with whom the child resides more than 50% of the time, which is not the Appellant.

### **CONCLUSIONS OF LAW**

- 1) Policy stipulates that only the custodial parent of a child may be included in the WV WORKS benefit.
- 2) Custodial parent is defined by policy as the parent with whom the child resides more than 50% of the time.
- 3) The Appellant has a shared parenting plan of her daughter, but is court-ordered less time with her daughter than the father.
- 4) The Appellant does not meet the definition of a custodial parent, and is ineligible to receive WV WORKS benefits.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to terminate the Appellant's WV WORKS cash assistance benefits.

**ENTERED this 19<sup>th</sup> day of April 2017**

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**Kristi Logan  
State Hearing Officer**