



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 30, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 24, 2005. Your hearing request was based on the Department of Health and Human Resources' action to close your Food Stamp and AFDC-related Medicaid cases effective May 31, 2005.

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 Food Stamp and Medicaid Programs are based on current policy and regulations. Some of these regulations state as follows: The amount of countable assets cannot exceed \$2,000 for the Food Stamp Program and \$3,050 for the AFDC-related Medicaid Program for a three-person assistance group (WV Income Maintenance Manual Section 11.3 and Federal Regulations Section 273.8).

The information which was submitted at your hearing revealed that you have a Certificate of Deposit and IRA which are accessible to you with a total value of \$10,027.27 less an early withdrawal penalty of \$2,005.45, which leaves countable assets from those sources as \$8,021.82 and that amount exceeds the maximum allowable asset limit of \$2,000 for Food Stamps and \$3,050 for AFDC-related Medicaid.

It is the decision of the State Hearings Officer to uphold the action of the Department to close your Food Stamp and AFDC-related Medicaid cases effective May 31, 2005.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Brenda Bailey, Department Hearing Rep.

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

Claimant,

v. Action Number:

**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 August 24, 2005 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 fair hearing was convened on August 24, 2005 on a timely appeal, filed May 26, 2005. It should be noted that the hearing was originally scheduled for July 7, 2005 but was rescheduled at claimant's request.

It should be noted here that the claimant's benefits have been closed pending a hearing decision.

II. PROGRAM PURPOSE:

The Programs entitled Food Stamp Program and AFDC-related Medicaid Program are set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The purpose of the Food Stamp Program is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households". This is accomplished through the issuance of EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture

The Aid to Families with Dependent Children (AFDC, AFDCU for unemployed parents) Medicaid Program is designed to provide medical assistance to eligible families with children to age 18. These dependent children must be deprived of parental support due to the death,

continued absence, incapacity, or unemployment of the parents. In addition, the family must meet financial eligibility criteria.

III. PARTICIPANTS:

1. _____, Claimant.
2. _____, Claimant's mother
3. Brenda Bailey, Department Hearing Rep.

Presiding at the Hearing was Thomas M. Smith, 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 took the correct action to close the Food Stamp and AFDC-related Medicaid Program cases effective May 31, 2005 due to excessive countable assets.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 11.3, 11.4.
Federal Food Stamp Regulations Sections 273.8.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- A Copy of hearing summary.
- B Copy of combined application/review form 5-5-05 and associated documents (31 pages).
- C Copy of bank statements (4 pages).
- D Copy of notification letter 5-16-05 (4 pages).
- E Copy of WV Income Maintenance Manual Sections 11.3, 11.4 (8 pages).

VII. FINDINGS OF FACT:

- 1) The claimant was receiving Food Stamps and AFDC-related Medicaid and was in the local office on 5-5-05 to complete reviews when she reported having a checking account, an IRA for herself, a Certificate of Deposit (CD) for her child, _____, a lump sum amount from court for alimony, and a vehicle.
- 2) The caseworker requested verification of the current value of the IRA and the CD and to verify whether the claimant had access to the accounts and a statement was received from Branch Banking & Trust of _____ verifying that the IRA was valued at

\$4,802.21 and was accessible to Ms. _____ with an early withdrawal penalty and that the CD was valued at \$5,226.06 and was accessible by the claimant.

- 3) The caseworker determined total assets to be \$10,083.09 including the IRA and CD which exceeded the asset limit of \$2,000 for Food Stamps and \$3,050 for AFDC-related Medicaid and notification of case closure was sent on 5-16-05 effective 5-31-05.
- 4) Ms. Bailey testified that the IRA and CD were not previously reported by the claimant according to the case record.
- 5) The claimant testified that she moved to West Virginia on 10-16-04 and moved in with her mother and had three (3) reviews and gave the same answers each time.
- 6) The claimant testified that she told the workers she had a 401K from [REDACTED] and told the workers that she had a CD which was in her daughter's social security number and the third time, the caseworker asked if she had access to the accounts and she stated that she did not know and she was asked to verify whether or not she had access to the accounts.
- 7) The claimant testified that she does not understand why she was determined ineligible and that there is a 20% penalty on early withdrawal from both accounts.
- 8) Ms. Bailey testified that the amount of the CD alone would make the claimant ineligible based on excessive assets and that she believes that 20% is the correct penalty amount.
- 9) WV Income Maintenance Manual Section 11.3 states, in part:

"To be eligible for the Food Stamp Program, the total amount of countable assets cannot exceed the amounts which are listed in the chart below:

Food Stamps \$2,000 - all benefit groups except as below.

\$3,000 - at least one AG member is age 60 or over, or is disabled, according to Section 12.15, regardless of the size of the AG.

AFDC-related	Size of AG	Asset Level
	1	\$2,000
	2	\$3,000
	Add \$50 to the asset maximum for each additional Needs Group Member"	

- 10) WV Income Maintenance Manual Section 11.4 B, 4 states, in part:

"4. Certificates of Deposit (CD's)

The amount deposited, plus any accrued interest, minus any penalties imposed for early withdrawal, is counted as an asset.

Some funds held in CD's cannot be withdrawn prior to maturity under any circumstances. In this situation, the certificate is not an asset until the first month after it matures."

- 11) WV Income Maintenance Manual Section 11.4, AA, 2 states, in part:

"3. IRA, KEOGH, Simplified Employer Pension Plan or Similar Plans.
Food Stamps, WV WORKS, and AFDC Groups: Individual Retirement Accounts (IRA's), Simplified Employer Pension Plans (SEPs), which are considered IRA's, and funds held in KEOGH plans which do not involve the AG members, are counted as assets. The amount counted is the total cash value of the account or plan, minus the amount of the penalty, if any, that would be applied for the early withdrawal of the entire amount.

VIII. CONCLUSIONS OF LAW:

- 1) WV Income Maintenance Manual Sections 11.4 B, 4 and AA, 2 clearly state that CD's and IRA's respectively are considered as assets minus any penalty for early withdrawal. The claimant verified through BB & T Bank of [REDACTED] that the CD and IRA were both accessible to her minus any early withdrawal penalty. The claimant and Ms. Bailey both testified that they believe the early withdrawal penalty is 20%. The total amount of the CD and IRA at the time of the review was \$10,027.27 and a 20% penalty for early withdrawal would be \$2005.45, which would leave \$8021.82 as countable assets from the CD and IRA alone. The amount of \$8021.82 would clearly exceed the \$2,000 asset limit for Food Stamps and the \$3,050 asset limit for the AFDC-related Medicaid Program. Thus, while it appears the Department may have calculated the asset amounts from the CD and IRA without deducting the penalty for early withdrawal, the State Hearing Officer finds that the Department took the correct action in determining that the claimant was ineligible for the Food Stamp and AFDC-related Medicaid Programs due to excessive assets and took the correct action to close those cases effective May 31, 2005.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to determine that the claimant was ineligible for the Food Stamp and AFDC-related Medicaid Programs and to close the cases effective May 31, 2005.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of August, 2005.

Thomas M. Smith
State Hearing Officer