



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757

Joe Manchin III Governor	Martha Yeager Walker Secretary
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January 18, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 29, 2005. Your hearing request was based on the Department of Health and Human Resources' denial of Food Stamp benefits for children who were living in your home during the months of June, July, and August 2005.

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 Food Stamp Program is based on current policy and regulations. Regulations state that the coupon allotment is determined by finding the countable income and the number in the benefit group. In order to be an eligible recipient of Food Stamp benefits, the client must meet the eligibility requirement of residency. The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the state or project area. Persons in a project area solely for vacation purposes shall not be considered residents. (West Virginia Income Maintenance Manual 8.2, 10.4 and Code of Federal Regulations §7 CFR § 273.3)

The information, which was submitted at the hearing, revealed that the Department's denial of Food Stamp benefits is based on a "visitation" clause in DHHR's residency policy that is not supported by the Code of Federal Regulations.

It is the decision of the State Hearing Officer to **reverse** the action of the Agency to deny Food Stamp benefits for Children, whom you reported, to be residing in your home.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Ann Hubbard, DHHR

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

_____,
Claimant,

v.

Action Number: 05-BOR-6659

**West Virginia Department of
Health and Human Resources,**

Respondent.

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on December 29, 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 convened on December 29, 2005 on a timely appeal filed September 6, 2005.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The program entitled Food Stamps is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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 food coupons to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

_____, Claimant

Ann Hubbard, Income Maintenance Worker, DHHR

Presiding at the hearing was Sharon K. Yoho, 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 Agency was correct in their denial of Food Stamp benefits for children reported to be residing in your household.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 8.2,10.4
7 CFR § 273.3 & 7 CFR § 273.18 - Code of Federal Regulations.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department Exhibits:

- D-1 Court order, 05/26/00, re _____ and _____
- D-2 Court order, 12/20/99, re _____
- D-3 Court order, 02/05/03, re _____
- D-4 Denial letter dated 07/26/05
- D-5 Income Maintenance Manual Policy 8.2

VII. FINDINGS OF FACT:

- (1) The claimant was an active recipient of Food Stamp benefits when he called the DHHR Customer Service Center on June 17, 2005 and requested that children, _____, _____ and _____ be added to his Food Stamps for the period, which they would be residing in his home during the summer months of June, July and August.
- (2) The Customer Service Center advised Mr. _____ that his children could not be added because they were visiting and did not intend to reside in West Virginia.
- (3) _____ and _____ resided with the claimant from June 7, 2005 thru August 25, 2005. _____ resided with the claimant from July 3, 2005 thru August 25, 2005. On August 25, 2005, the children returned to Virginia for the school year.
- (4) Court orders, Exhibits D-1, D-2 & D-3, dictate that the primary physical custody for these children is with the respective Fathers in the State of Virginia. The orders further disclose that the Mother, _____, is awarded visitation.
- (5) The Department provided written notification to the claimant, on July 26, 2005, that his request for an increase in his Food Stamp benefits for the children was denied. The reason for denial was described as: "The court order states that the children are visiting and therefore cannot be considered as intending to reside."
- (6) The Board of Review has visited this issue on three other occasions through the Fair Hearing process with this same claimant. The Department's decision to deny benefits for these children was

reversed in all three occasions. These reversals contend that the Department's policies are in conflict with Federal Regulations.

- (7) West Virginia Income Maintenance Manual § 10.4,C, contains policy relating income disregards and deductions and computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and number (of persons) in the benefit group.
- (8) West Virginia Income Maintenance Manual § 8.2 (All Programs) states that in order to be eligible to receive benefits, (paragraph #2), the client must meet the eligibility requirement of residence. The client must live within the borders of West Virginia. Intent to remain permanently in West Virginia is not a requirement, although the client must reside in the State for purposes other than vacation or visitation. A time limit **cannot be set** (emphasis added) for how long the client must live in West Virginia. The client cannot be required to maintain a permanent or fixed dwelling. (Paragraph #3) An individual remains a resident of the former state until he arrives in West Virginia with the intention of remaining indefinitely.
- (9) West Virginia Income Maintenance Manual, Chapter 8.2,A,3 (Food Stamps) Prolonged Absence From the Home, provides that regardless of the reason for the absence, any person expected to be absent from the home for a full calendar month or more is not eligible to be included in the AG.
- (10) According to West Virginia Income Maintenance Manual Chapter 8.2,A,3,(a), (Food Stamps) Temporary visits with the intent to return do not affect the individual's place of residence, unless he has been or is expected to be absent from the home for a full calendar month.
- (11) West Virginia Income Maintenance Manual Chapter 8.2,A,3(c), (3rd example) provides the following: A divorced man and woman both live in West Virginia. On May 15 the woman reports her oldest child will be visiting his father during summer vacation from June 11 to September 1. After proper notice, the oldest child is removed from the woman's AG for July and August, because he will be absent from the home for those two full calendar months. The father applies for FS for the child on July 1 and is denied, because the child's place of residence is still with the mother and he is only temporarily visiting his father.
- (12) The Code of Federal Regulations, found at 7 CFR § 273.3 state that no individual may participate as a member of more than one household or in more than one project area, in any month. **The State agency shall not impose any durational residency requirements.** (emphasis added) The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the state or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

VIII. CONCLUSIONS OF LAW

Policy reveals that eligibility and benefit levels for the Food Stamp Program are based on countable income and the number of individuals in the benefit group. In order to be a recipient of Food Stamp benefits, the individual(s) must meet the eligibility requirement of residency. Temporary visits with the intent to return do not affect the individual's place of residence, unless he has been or is expected to be absent from the home for a full calendar month. Any person expected to be absent from the home for a

full calendar month or more is not eligible to be included in the AG (Assistance Group). This person would, at that point, be considered a resident elsewhere.

The Code of Federal Regulations provides that the State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible individual to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the state or project area. Persons in a project area solely for vacation purposes shall not be considered residents. In addition to the requirements included in the CFR, the Department's Policy adds an Example which stipulates that if a child is participating in a parental visitation with a parent for two full months, he must be removed from the Food Stamp benefits of the first parent and is ineligible to be included in the Food Stamp benefits of the second parent. The CFR does not include visitation in the residency requirements as a means to exclude otherwise eligible individuals. Evidence reveals that this Food Stamp household has been under-issued benefits for the periods of June, July and August 2004. The Food Stamp Program Purpose, as stated in Section II, dictates that: "The purpose of the Food Stamp Program is to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." It is very clear that Mr. _____'s household is considered a low-income household, eligible for Food Stamp benefits. The addition of two to three household members for a period of more than two full months would undoubtedly cause an adverse effect to the health and well-being of the total household if additional benefits were not received. Children who are placed in a joint custody arrangement might also spend the summer months with one parent who has joint legal and physical custody. The time spent during the summer months might not be indicated in a custody order as "visitation," however, the summer time spent in the custodial parent's home could likely be the same length as was for the children residing in this claimant's home. It is clear that the intent of the Federal Regulations is to insure eligibility for all household members who reside together and that residency should not be considered for only those who intend to reside permanently. The children in this case were participating in court-ordered visitation that exceeded a full calendar month, during which time, they resided in the home of Mr. _____. It is the finding of this Hearings Examiner that these children were eligible recipients of the Food Stamp program and should have been included in the active Food Stamp case of Mr. _____.

IX. DECISION:

The denial by the Department to include the children as Budget Group members during the months of June, July and August 2005 is reversed. The Department is ordered to issue Food Stamp benefits to the claimant for the period of time, which the children resided during the summer months while taking into consideration the date in which the client made his request.

X. RIGHT OF APPEAL

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 18th Day of January 2006.

**Sharon K. Yoho
State Hearing Officer**

