



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 21, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 17, 2007. Your hearing request was based on the Department of Health and Human Resources' action to reduce your Food Stamps and terminate your Medicaid benefits.

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 and Medicaid Programs is based on current policy and regulations. Some of these regulations state as follows: For the Food Stamp Program: In the instance of shared custody, if no one is receiving any benefits from the Department for the child, it is assumed that the living arrangements are not questionable and the child is added to the AG that wishes to add him. If the child is already listed in another AG or the other parent wished to add the child to his AG, the parents must agree as to where the child "lives" and, ultimately, to which AG he is added. (West Virginia Income Maintenance Manual Section 9.1) For Qualified Child Medical: in a joint custody situation in which a child resides 50% of the time with each parent, the income of both parents is counted for the child. (WV Income Maintenance Manual Section 9.7B)

Based on information submitted at your hearing, the custody of your children is considered "shared" with each parent providing an equal amount of time and support. Although the actual amount of time each parent spends with the children fluctuates due to various reasons, the parenting plan is generally adhered to, with the mother providing care 95.5 hours weekly, and the father providing care 72.5 hours weekly. The children's father does not receive any benefits for the children from the Department.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to reduce your Food Stamp and terminate your Medicaid benefits.

Sincerely,

Cheryl McKinney
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Sheila Napier, Boone DHHR

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

_____,
Claimant,

v.

Action Number: 06-BOR-1062

**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 May 5, 2007 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 April 17, 2007 on a timely appeal filed March 13, 2007.

It should be noted that benefits have been continued pending the results of the hearing.

II. PROGRAM PURPOSE:

The program entitled Food Stamps is 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 Department provides Medicaid to Qualified Children born prior to the federal eligibility date of 10/01/83. This was mandated by the State Legislature and required a waiver from the federal regulations to implement. These children are Qualified Children in every way except their age. They are referred to as Medicaid Expansion cases because the approved waiver allowed the Department to expand Qualified Child Medicaid coverage to more children.

III. PARTICIPANTS:

_____, Claimant, participated by telephone

Sheila Napier, Boone DHHR

Gene Holderby, Investigator, Kanawha DHHR

_____ witness #1

_____ witness #2

_____ witness #3

Presiding at the hearing was Cheryl McKinney, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department took the correct action to reduce the Claimant's Food Stamps and terminate Medicaid benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 9.1, 9.7B

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Notification letter dated March 15, 2007

D-2 West Virginia Income Maintenance Manual Chapter 9.1

D-3 Hearing Summary

D-4 Witness Statement obtained from _____ dated January 8, 2007

D-5 Witness Statement obtained from _____ dated December 7, 2006

D-6 Copies of Calendars completed by children's father (15 pages)

Claimant's Exhibits:

C-1 Letter completed by Claimant documenting parenting schedule

C-2 Copies of Calendars completed by Claimant (17 pages)

VII. FINDINGS OF FACT:

- 1) During the month of October 2006 the Department initiated an investigation into the Claimant's household composition after having received a complaint alleging the Claimant did not have custody of her children 50 % of the time. The Department's Investigator interviewed numerous persons during the course of his investigation and obtained written statements from them. (D-4, D-5) As a result of this investigation, the Department sent the Claimant a letter dated March 15, 2007 indicating that her food stamps would decrease and her medical assistance would terminate effective April 2007. The reason listed for the action included the following:

FOOD STAMPS

The number of people receiving this benefit has decreased. The following individuals are ineligible. If they are affected by the ABAWD 36 month tracking policy, the tracking period will be stated after their name.

_____ – This individual's current living situation prevents him or her from being eligible for this assistance.

_____ – This individual's current living situation prevents him or her from being eligible for this assistance.

_____ – This individual's current living situation prevents him or her from being eligible for this assistance.

MEDICAL ASSISTANCE

The individuals' current living situation prevents them from being eligible for this assistance.

- 2) Witness #1 testified that he is the father of the children and he keeps the children most of the time. He testified that he keeps them often during the week when the Claimant has custody. He agreed that they share custody and generally adhere to the Parenting Plan. If he gets time off work he will sometimes keep the children during the Claimant's time, and has kept the children when the Claimant has gone out of town in the past. The Department submitted copies of calendars (D-6) the witness had compiled as a record of the times he kept the children in the recent past. These calendars indicate that the witness kept the children with him according to the Parenting Plan, with occasional variations due to work schedules and individual plans. Most of the pages were not labeled to indicate which month they represented; therefore no true comparison could be made with the Claimant's calendar records.

- 3) Witness #2 testified that he lived two (2) or three (3) miles from the children's father. In his written statement he indicated that it was his personal observation that the father kept the three children at least seventy per cent (70%) of the time. On cross examination, he stated that he could not recall how recent this pattern had occurred and could not remember exact days, but indicated that it had not occurred within the past week.
- 4) Witness #3 indicated in his written statement that he has known the children's father all his life, and lives about four (4) or five (5) miles away from him. He indicated he visits the children's father about once a week, and believes the children live with their father about sixty per cent (60%) of the time. On cross examination, he testified that he only visits them on the weekends and the children were always there but could not say how often during the week they are there.
- 5) The children are being cared for equally by both parents. A Parenting Plan is in effect which calls for "shared custody" and the Claimant to care for the children 95.5 hours weekly and the father to care for them 72.5 hours per week. The parents work together to accommodate the children's needs and each other's schedules, which causes occasional deviations from the Parenting Plan. At least one of the children attends school in the Claimant's residential area.
- 6) WV Income Maintenance Manual Section 9.1 states in pertinent part:

FOOD STAMPS - WHO CAN BE INCLUDED

In the instance of shared custody, when the child is **legally** (my emphasis) considered to reside with each parent equal amounts of time (50/50), the parents must decide where the child "lives". If no one is receiving any benefits from the Department for the child, it is assumed that the living arrangements are not questionable and the child is added to the AG that wishes to add him. If the child is already listed in another AG or the other parent wishes to add the child to his AG, the parents must agree as to where the child "lives" and, ultimately, to which AG he is added. Where the child receives the majority of his meals is not relevant.

- 7) WV Income Maintenance Manual Section 9.7B states in pertinent part:

QUALIFIED AND POVERTY-LEVEL CHILDREN

NOTE: In a joint custody situation in which a child resides 50% of the time with each parent, the income of both parents is counted for the child. In a joint custody situation in which the child spends the majority of his time with one parent, only the income of that parent is counted.

VIII. CONCLUSIONS OF LAW:

1. Evidence and testimony presented during the hearing support the finding that this household is operating in a “shared custody” arrangement, and **follows** a Parenting Plan that calls for the Claimant to care for the children 95.5 hours weekly and the father to care for them 72.5 hours weekly. These timeframes fluctuate from time to time to accommodate the lifestyles of all family members. It is clear that the father does keep the children on occasion during the Claimant’s assigned timeframes, and that this is agreed upon by both parties. However, the Claimant has also kept the children during the father’s assigned timeframes.
2. The Department incorrectly reduced the claimant’s food stamp benefits and terminated medical coverage. The Claimant is entitled to be evaluated for the food stamp program and medical programs based on the fact that she is in a “shared custody” arrangement and cares for the children 95.5 hour weekly.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department to reduce the Claimant’s Food Stamps and terminate Medicaid benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of June 2007

Cheryl McKinney
State Hearing Officer