



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 17, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 25, 2008. Your hearing request was based on the Department of Health and Human Resources' action to terminate your eligibility for WV Works Cash Assistance, Food Stamps, and Medicaid.

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 Cash Assistance, Food Stamps and Medicaid Programs is based on current policy and regulations. Some of these regulations state as follows: For the Food Stamp Program: Individuals living together and holding themselves out to the community as husband and wife must be included in the same assistance group. (WV Income Maintenance Manual Section 9.1.2) For WV Works Cash Assistance: The parents of included children must be included in the same assistance group when living in the home. (WV Income Maintenance Manual Section 9.21.A.1) For Medicaid: AFDC – All otherwise eligible dependent children and their otherwise eligible parent(s) living in the same household must be included in the same assistance group. (WV Income Maintenance Manual Section 9.4.A.1) MQCA – The income of the following individuals is used to determine the child's eligibility – the child, the child's mother if in the home, and the child's legal father if living in the home. (WV Income Maintenance Manual Section 9.7.B)

The information submitted at your hearing shows that although _____ is the legal father of one of your minor children, insufficient evidence was provided to show conclusively that he lives in your household. Therefore, he should not have been included when evaluating your eligibility for the Department's programs.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate your eligibility for WV Works Cash Assistance, Food Stamps, and Medicaid.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Michael Stanley, [REDACTED] DHHR

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

_____,

Claimant,

v.

**Action Number: 08-BOR-1896 WVW
08-BOR-1897 FS
08-BOR-1898 Medical**

**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 September 25, 2008 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 September 25, 2008 on a timely appeal filed August 5, 2008.

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

II. PROGRAM PURPOSE:

FOOD STAMPS

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.

MEDICAID

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.

WV WORKS

WV Works was created by Senate Bill 140, Article 9 of the West Virginia Code and the Temporary Assistance to needy Families Block Grant, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The purpose of WV Works is to provide assistance to needy families with children so they can be cared for in their own home, reduce dependency by promoting job preparation, work and marriage. The goals of WV Works are to achieve more efficient and effective use of public assistance funds, reduce dependence on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

_____, Claimant

_____, Claimant's sister

Randall Coleman, Child Protective Services Worker, [REDACTED] DHHR

Michael Stanley, Department Representative

Presiding at the hearing was Cheryl Henson, 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 terminate the Claimant's WV Works Cash Assistance, Food Stamps and Medicaid.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 9.1, 9.7B and C

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1 Letter from _____ dated May 5, 2008
DHS-2 Income Verification dated July 23, 2008
DHS-3 Summons dated February 15, 2008

Claimant's Exhibits:

C-1 Signed Statement - undated

VII. FINDINGS OF FACT:

- 1) The Claimant was an active recipient of WV Works Cash Assistance, Food Stamps and Medicaid during the month of July 2008. The Claimant's household composition was listed as including herself and her two children, [REDACTED] and _____. The benefits were being managed by the Department's WV Works Unit.
- 2) The Department contends that in July 2008 their Child Support Unit, which is a separate unit within the Department, provided the WV Works Unit with a copy of a letter from _____, hereinafter referred to as "Absent Parent". (DHS-1). In the letter, the Absent Parent, who is the father of _____, claims that he has been unable to work, and includes the following pertinent statement:

I also recomend [sic] that the department consider that I have another child which is _____ which lives in my household of trying to survive from month to month.

- 3) The Department also presented as evidence income verification (DHS-2) from _____, Inc., for the Absent Parent. This form, dated July 23, 2008, indicates that the Absent Parent is employed by their company, and has earned \$8362.59 Gross pay within the last sixty days. The form does not give a beginning date of employment, however, does indicate that the Absent Parent earns \$20.35 per hour and is paid weekly. It lists his current address as [REDACTED] WV [REDACTED]
- 4) The Department presented evidence in the form of a summons for the Absent Parent dated March 3, 2008 (DHS-3) which indicates that it was delivered to the Claimant's address and shows she signed and accepted the document on behalf of the Absent Parent. A note on the back of the form indicated the Deputy Sheriff served the form to the Claimant and listed her as the Absent Parent's "live in girlfriend".
- 5) The Department contends they used the provided income verification (DHS-2) and other documentation (DHS-1, DHS-3) in order to re-evaluate the Claimant's eligibility. They determined that the Absent Parent was living in the home with the Claimant, and as a result, must be included in the Benefit Group with the Claimant. The Department sent the Claimant a notification letter that included the following pertinent information:

ACTION: WV Works

Your WV WORKS will stop. You will not receive this benefit after AUGUST 2008.

REASON: Income is too much for you to receive benefits. Income is more than the net income limit for you to receive benefits. Earned income increased.

The following individuals are ineligible.

Food Stamps (FS)

ACTION: Your Food Stamps will stop. You will not receive this benefit after AUGUST 2008.

REASON: Income is too much for you to receive benefits. Income is more than the net income limit for you to receive benefits. Earned income increased.

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

_____ FROM 10/2006 TO 09/2009

_____ FROM 11/2007 TO 10/2010

Your Gross Income.....3500.20

The Department also terminated the Claimant's MAAR Medicaid and MQCA Medicaid for her child, _____.

- 6) The Claimant testified that the Absent Parent does not live with her. She added that in her opinion the Absent Parent was "trying to get his child support reduced" when he wrote that letter to Child Support (DHS-1). The Absent Parent was not available for testimony.
- 7) The Claimant states that in regard to the summons presented as evidence by the Department (DHS-3) she did accept the document from the deputy, but did not tell him

she was the Absent Parent's girlfriend. The summons includes original physical directions listed as : _____, turn right at _____ road, _____ The form was amended at some point and the following information added: new bridge pink trailer on left, white pole fence. The Claimant testified that the original address listed on the form was the Absent Parent's. The amended information is the directions to her home. She stated she accepted the form from the deputy on the Absent Parent's behalf because she wanted to make sure he got it, since it pertained to her child support issue.

- 8) The Claimant's sister testified that she is there every day with the Claimant and her children, and knows that the Absent Parent does not live with them. She stated he has never lived there.
- 9) The Claimant presented evidence (C-1) in the form of a statement signed by four individuals she refers to as "neighbors". The form was not dated and included the following statement:

I hereby state that to the best of my knowledge _____
does not live with _____ and her children.

The individuals who signed this form were not available for testimony.

- 10) The Child Protective Services Worker testified that he had interviewed the Absent Parent within the last month at the DHHR office in _____ County, and states that to the best of his recollection the Absent Parent stated he did not live with the Claimant. He indicated that he had not been to the Absent Parent's home, but had been to the Claimant's house. He noticed no indication that the Absent Parent lived there. He stated that other neighborhood residents he interviewed through the course of a recent investigation indicated that the Absent Parent did not live with the Claimant.
- 11) WV Income Maintenance Manual Section 9.1,(2) states in pertinent part:

FOOD STAMPS - WHO CAN BE INCLUDED

The following individuals who live together must be in the same AG (Assistance Group), even if they do not purchase and prepare meals together.

Spouses

For these purposes, spouses are individuals:

- Who are married to each other under state law: or

Who are living together and holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors or trades people.

- 12) WV Income Maintenance Manual Section 9.4.A.1 states in pertinent part:

AFDC MEDICAID

A. THE ASSISTANCE GROUP

1. Who Must Be Included

The following individuals are required to be included:

All otherwise eligible dependent children and their otherwise eligible parent (s) who are living in the same household must be included in the AG (Assistance Group).

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

QUALIFIED AND POVERTY-LEVEL CHILDREN

B. THE INCOME GROUP

The income of the following individuals is used to determine the child's eligibility:

- The child
- The child's mother, if living in the home
- The child's legal father, if living in the home
- The child's legal spouse, if living in the home

- 14) WV Income Maintenance Manual Section 9.21.A.1 states in pertinent part:

WV WORKS ELIGIBILITY DETERMINATION GROUPS

A. THE ASSISTANCE GROUP

1. Who Must Be Included

The following individuals are required to be included:

- All minor, dependent, blood-related and adoptive siblings who live in the same household and are otherwise eligible. For this purpose only, otherwise eligible means living with a specified relative.
- The parent(s) of the child(ren) identified above when the parent(s) lives with the child(ren).

VIII. CONCLUSIONS OF LAW:

1. Policy is clear in that for the programs of assistance in question, that being WV Works Cash Assistance, Food Stamps, Adult Medical and MQCA Medical, parents living together must be included, and their income and assets counted, in the same Assistance Group. .
2. The evidence and testimony provided during this hearing support the finding that the Department did not have sufficient evidence to include the Absent Parent in the Claimant's cases in considering eligibility. Although the Department had reason to question the Claimant's household composition with the evidence provided in Department's exhibits (DHS-1, and DHS-3), they did not have enough evidence at the time to show conclusively that the Claimant and the Absent Parent lived together.
3. The weight of the evidence and testimony provided during this hearing support the Claimant's contention that she does not and did not live with the Absent Parent. Less consideration was given to written statements when witnesses were not available to be cross examined. Two separate witnesses provided testimony in person to support the Claimant's position; one such witness being an employee for the Department' Child Protective Services Unit. I find both witness statements credible.
4. Given the information the Department had available at the time (DHS-1, DHS-2, DHS-3), they were not correct in their decision to include the Absent Parent and his income when evaluating the Claimant's eligibility for the programs in question.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate the Claimant's WV Works Cash Assistance, Food Stamps, MAAR and MQCA Medicaid for the Absent Parent's child.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of October, 2008

Cheryl Henson
State Hearing Officer