



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 19, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 31, 2008. Your hearing request was based on the Department of Health and Human Resources' action to deny your Food Stamp and AFDC 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 AFDC Medicaid Programs is based on current policy and regulations. Some of these regulations state that individuals cannot receive Food Stamps concurrently in two different counties. In addition, regulations state that a deprivation factor must be established in order for an Assistance Group to receive AFDC Medicaid. (West Virginia Income Maintenance Manual Sections 8.6 and 15.2)

Information submitted at your hearing reveals that your children could not be added to your Food Stamp case because they were receiving concurrent benefits in another county. In addition, information presented during the hearing fails to establish the presence of a deprivation factor for AFDC Medicaid purposes.

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying your Food Stamp increase and AFDC Medicaid application.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Teresa Nestor, FSS, DHHR

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

_____,
Claimant,

v.

**Action Number: 08-BOR-2083
08-BOR-2084**

**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 November 19, 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 October 31, 2008 on a timely appeal filed September 8, 2008.

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 an EBT card 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:

_____, Claimant
Teresa Nestor, Family Support Supervisor, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 was correct in its action to deny the Claimant's benefits through the Food Stamp and AFDC Medicaid Programs.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 8.6, 15.2, C, 1 and 15.2, C, 2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing summary
- D-2 Statement from _____ dated August 13, 2008
- D-3 Notice of Decision dated September 3, 2008
- D-4 West Virginia Income Maintenance Manual Sections 8.6, 9.1, 9.4 and 9.7

VII. FINDINGS OF FACT:

- 1) The Claimant applied for Food Stamps and SSI-Related Medicaid at the Barbour County DHHR Office on June 6, 2008. His Food Stamp application was approved, but his SSI-Related Medicaid application is pending a State Medical Review Team disability determination.
- 2) On August 19, 2008, the Claimant indicated that his two sons were residing with him and requested that the children be added to his Food Stamp Assistance Group. The Claimant also applied for AFDC Medicaid. The Family Support Supervisor testified that both the AFDC Medicaid application and Food Stamp increase were denied because the Claimant's sons were receiving benefits in their mother's case in Lewis County. The Department sent the Claimant a Notice of Decision (D-3) on September 3, 2008 citing the reason for the denial of benefits.
- 3) The Claimant testified that his sons came to his home on July 12, 2008 for a two-week visitation, but decided they did not want to leave. He stated that the boys were with him until the first part of September 2008, at which time they had to choose what school they

The Claimant maintained that he should have received additional Food Stamps for the month of September 2008 and AFDC Medicaid for the months of July, August and September 2008. The Supervisor testified that the Department was unaware that the children were residing in the Claimant's home until August 13, 2008 when he submitted the letter to DHHR.

- 4) West Virginia Income Maintenance Manual Section 8.6 (D-4) states:

A client may not receive Food Stamp benefits, WV WORKS or Medicaid concurrently in more than one county in West Virginia or more than one state.

- 5) West Virginia Income Maintenance Manual Section 15.2, C, 1 states that to receive AFDC Medicaid:

The dependent child must be deprived of parental support and care and the cause of this deprivation must be identified as described in the following sections.

1. Relationship of Deprivation Factor to Living Arrangements

The living arrangements of the child determine the broad category of deprivation applicable to the child.

a. Child Lives With Both Parents

The deprivation factor must be incapacity of either parent or unemployment of the parent who is the principal wage earner.

b. Child Lives With One Parent

The deprivation factor must be either death or continued absence of the other parent. This is true even though he may have half siblings in the home who are included in the AG and whose deprivation factor is unemployment or incapacity of the common parent.

6) West Virginia Income Maintenance Manual Section 15.2, C, 2 defines continued absence as:

- The parent is physically absent from the home for any reason; and
- The nature of the absence is such as to either interrupt or terminate the parent's functioning as a provider of maintenance, physical care or guidance for the child; and
- The known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the child.

7) West Virginia Income Maintenance Manual Section 15.2, C, 2 states that continued absence can be the result of desertion, separation or divorce, incarceration, paternity not established, court-ordered home confinement, military service, joint custody, or other situations such as single parent adoptions, political detainment, hostage situations, etc. The manual provides the following information concerning separation/divorce and joint custody situations:

The specific cause of absence is separation or divorce when:

- The parent has been legally absolved of the responsibility for support, and this is noted in the court order; or
- The parent has been ordered by the court to support and is adhering to that court order; or
- The parents are not married to each other, but paternity has been legally established, and one of the situations outlined in this item exists

The section goes on to state:

Cases involving joint custody of a child require a case-by-case determination of whether or not the definition of absence is met. This decision is made by the Worker and Supervisor, and a complete case recording explaining the decision must be made. When the child is physically in the home of each parent for portions of each month, the absence is not of a continuous nature and both parents continue to act as parents to the child. On a regular basis, they make decisions and arrangements in the child's best interest. Therefore, absence does not exist when:

- The parents have legal joint custody of the child; and
- The child is physically in the home of each parent for portions of each month; and
- There is an ongoing, continuing relationship between the child and the parents, with both parents involved in providing parental support and care

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual cannot receive Food Stamps concurrently in two different counties in West Virginia. In addition, policy states that in order for an Assistance Group to receive AFDC Medicaid, a child must meet a deprivation factor (be deprived of parental support and care). When a child resides with one parent, the deprivation factor must be either death or continued absence of the other parent. The nature of the other parent's absence must either interrupt or terminate that parent's functioning as a provider of maintenance, physical care or guidance for the child. In addition, the duration of the other parent's absence must preclude counting on that parent's performance to plan for the present support or care of the child.
- 2) The Claimant requested in August 2008 that his sons be added to his Food Stamp benefits, however, the children continued to receive Food Stamps in their mother's case due to an alleged agency error. Because individuals cannot receive Food Stamps concurrently in two different cases, the Agency acted correctly in denying the Food Stamp increase for September 2008.
- 3) Because their mother is not deceased, the Claimant's sons must meet the deprivation factor of continued parental absence in order for the Assistance Group to qualify for AFDC Medicaid. While the children reportedly resided in the Claimant's home from mid July to early September, there is no evidence to establish that the children were deprived of their mother's care or guidance during that time period, particularly since they resided with her for a portion of two of the months in question. In addition, there is no evidence to establish that the Claimant could not count on his ex-wife's performance to plan for the support and care of the children. To the contrary, the children went back to their mother's home when they were asked to make a decision about where they would attend school. Therefore, the Agency acted correctly in denying the Claimant's AFDC Medicaid application.

IX. DECISION:

Based on information presented during the hearing, it is the decision of the State Hearing Officer to **uphold** the Agency's action to deny both the Claimant's AFDC Medicaid application and request for an addition to his Food Stamp Assistance Group.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of November, 2008

Pamela L. Hinzman
State Hearing Officer