



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

February 8, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 19, 2007. Your hearing request was based on the Department of Health and Human Resources' action to reduce your Food Stamps and terminate your Qualified Child 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. The parents choose not to discuss and decide who will be considered the primary parent for the Department's program purposes.

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

Sincerely,

Cheryl McKinney Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Sheila Napier, [REDACTED] DHHR

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

_____,
Claimant,

v.

**Action Number: 06-BOR-2405 - FS
06-BOR-2406 – QC 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 December 19, 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 December 19, 2007 on a timely appeal filed November 1, 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
_____, Claimant's father, witness

Sheila Napier, [REDACTED] DHHR

Presiding at the hearing was Cheryl McKinney 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 reduce the Claimant's Food Stamps and terminate Qualified Child Medicaid benefits.

V. APPLICABLE POLICY:

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Hearing Summary
D-2 West Virginia Income Maintenance Manual Chapter 9.1

Claimant's Exhibits:

C-1 Copy of Court Action Temporary Order dated August 2, 2006

VII. FINDINGS OF FACT:

- 1) The Claimant has received a medical card and Food Stamps for his child since May 2005. At some point after May 2005, the Claimant separated from his wife and began receiving the benefits separately. The Claimant's estranged wife and the child's mother applied for WV Works Cash Assistance in another county office in October 2007,

indicating that she has physical custody of the child. The Department sent the Claimant a letter October 31, 2007 which states the following:

ACTION: Your Food Stamps will decrease from \$190.00 to \$54.00 effective 12/01/07.

REASON: The number of people receiving this benefit has decreased. The following is the list of individuals who are eligible for this benefit. If an individual's income has increased or decreased, this will be stated followed by the amount of the increase or decrease. If they are affected by the ABAWD 36 month tracking policy, the tracking period will be stated after their name.

_____ FROM 8/2008 TO 07/2010

ACTION: Your Qualified Child Medicaid will stop. You will not receive this benefit after NOVEMBER 2007.

REASON: The household's current living situation prevents them from being eligible for this assistance. The following individuals are ineligible.

_____ – You will not receive this benefit because you get SSI.

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

- 2) The Claimant testified that both he and his estranged wife keep the child exactly 50% of the time. They meet at 12:00 noon every Friday at _____ Hospital and exchange the child. The child is 2 ½ years old, and they each keep him exactly one week at a time. The Department indicated the wife does not dispute this.
- 3) The Claimant and his estranged wife have a volatile relationship and have been unable to agree on who will be listed as keeping the child the majority of time for Department benefits purposes.
- 4) 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 considered to reside with each parent equal amounts of time (50/50), the parents **must** (my emphasis) 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.

- 3) 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 each parent keeps the child and equal amount of time. The parents do not agree on whom the child “lives” with for Department program purposes.
2. The Department correctly reduced the claimant’s food stamp benefits by removing the child in this situation; however, the termination of Qualified Child Medical coverage was incorrect. Policy dictates the Department is required to consider the income of both parents in determining eligibility for Qualified Child medical coverage. This does not appear to have been done.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of February, 2008

**Cheryl McKinney Henson
State Hearing Officer**