



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 23, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 6, 2009. Your hearing request was based on the Department of Health and Human Resources' reduction of SNAP and WV Works benefits, and termination of Medicaid due to household composition.

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 a like.

Eligibility for the SNAP, WV Works, and Medicaid programs is based on current policy and regulations. Some of these regulations state that the individuals included in a household's Assistance Group (AG) or Income Group (IG) change depending on the parent with majority custody. When a child does not reside with a parent a majority of the time, the child may not be included in that parent's SNAP or WV Works AG, and Qualified Child Medicaid for the child must be through the IG of the parent with majority custody. (West Virginia Income Maintenance Manual, Chapter 9.1; 9.7; 9.21)

The information that was submitted at your hearing revealed that the Department was correct to reduce SNAP and WV Works benefits, and terminate Medicaid benefits based on household composition.

It is the decision of the State Hearing Officer to **uphold** the proposed actions of the Department to terminate Medicaid benefits and reduce SNAP and WV Works benefits.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Patty Edmonds, Economic Service Worker

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

-----,

Claimant,

v.

**Action Numbers: 08-BOR-2471
 08-BOR-2472
 09-BOR-1074**

**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 April 23, 2009 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 March 6, 2009 on a timely appeal, filed November 18, 2008.

It should be noted the benefits have been continued through the hearing process.

II. PROGRAM PURPOSE:

The Programs entitled Medicaid, SNAP, and WV Works are set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

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.

The purpose of SNAP (formerly 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.

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 mother
Patty Edmonds, Family Support Specialist

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The questions to be decided are whether the Department ac-----correctly to terminate Medicaid and reduce the SNAP and WV Works benefits of the Claimant based on household composition.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 9.1; 9.7; 9.21

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 West Virginia Income Maintenance Manual, Chapter 9.21; 9.1
- D-2 Case Comments Screen Prints
- D-3 E-mail Screen Prints dated September 18, 2008
- D-4 Final Order dated November 5, 2008
- D-5 Cash Assistance Issuance Screen Prints
- D-6 Notification dated September 5, 2008
- D-7 Notification dated September 6, 2008

Claimant's Exhibits:

- C-1 Letter from Claimant's sister, dated February 28, 2009
- C-2 Final Order dated May 28, 2008
- C-3 Calendar from Claimant

VII. FINDINGS OF FACT:

- 1) Testimony indicated that the Department acted, on or about September 5, 2008, to reduce the Claimant's SNAP and WV Works benefits, and terminate the Qualified Child Medicaid of the Claimant's youngest son. This action was based on the Department's findings regarding the residence of the Claimant's youngest son. For each program in question, the notification to the Claimant (Exhibit D-6) provided the reason for this action as follows, in pertinent part:

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

- 2) Testimony from the Department indicated that the basis for this action was an investigation that concluded that the Claimant's youngest child did not reside with the Claimant more than the Claimant's ex-wife. No evidence or testimony regarding the investigation itself was provided by the Department. Case comments (Exhibit D-2) and E-mail Screen Prints (Exhibit D-3) were provided to show that the Department's eligibility worker responded to the findings of the Department's investigator.
- 3) Testimony from both the Claimant and his mother indicated that majority residence of the Claimant's youngest son is with the Claimant. A letter (Exhibit C-1) was provided from the Claimant's sister contending the same, but the sister was neither present to testify nor did she reside with the Claimant to personally witness household composition.
- 4) The Claimant presented a Final Order (Exhibit C-2) from the Family Court of [REDACTED] County, West Virginia, dated May 28, 2008. This order specifies the custody of the Claimant's children, and indicates that the Claimant's ex-wife is the residential parent of the Claimant's youngest son. It further indicates that during summer months, the youngest son is to alternate weeks between his mother and the Claimant – splitting custody evenly. During school months, the Claimant's youngest son is to visit the Claimant from Thursday evenings after school until Sunday evenings at 6 p.m., except on the third weekend of every month – an arrangement which does not place the Claimant's youngest son in his residence a majority of the time.

- 5) The Claimant testified that he had his youngest son in his home more than specified by Exhibit C-2. He provided a calendar (Exhibit C-3) showing the days of the month that his youngest son was staying with him, at his residence. During September 2008, the month of the Department's proposed action, the calendar follows the specifications in Exhibit C-2. The first two weeks of the month, the Claimant's youngest son stayed with the Claimant from Thursday after school until 6 p.m. on Sunday. On the third week of the month, the Claimant's youngest son visited the Claimant from after school on Wednesday until 6 p.m. on Friday. On the fourth weekend, the Claimant's youngest son stayed with the Claimant from Friday after school until 6 p.m. Sunday. Two additional days, September 22, 2008 and September 23, 2008, offset shortened weekends of the third and fourth weeks, respectively.

VIII. CONCLUSIONS OF LAW:

- 1) Although the Department failed to provide any testimony or evidence to support their household composition findings, the evidence provided by the Claimant clearly showed that his youngest son did not reside with him a majority of the time when the Department initially made its proposed actions. The divorce order submitted by the Claimant listed the Claimant's ex-wife as the residential parent of their youngest son, and provided a custody plan giving the Claimant less than 50% visitation. The Claimant's contention that his youngest son stayed with him more than ordered was not supported by the calendar he submitted as evidence.
- 2) The West Virginia Income Maintenance Manual, Chapter 9.1.A.1.b.2 describes the make-up of a SNAP Assistance Group, or AG, as follows (emphasis added):

(2) Purchase and Prepare Separately

Individuals or groups of individuals living with others, but who customarily purchase food and prepare meals separately, are an AG.

Customarily purchasing and preparing food separately means that, during the certification period, the client actually purchases and prepares his food separately from the others in the household over 50% of the time, except for an occasional shared meal. This occasional sharing of food does not interfere with his separate AG status.

EXCEPTION: The following individuals who live together must be in the same AG, 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 are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors or trades people.

Spouses who live together must be in the same AG. There are no exceptions. Couples who live together, but who are not married and do not hold themselves out to the community as husband and wife are not considered spouses.

- Children Under Age 18, Not Living With a Parent

Children under age 18 who live with and are under the parental control of an adult AG member who is not a parent, must be in the same AG as the member who exercises parental control.

- Children Under Age 22, Living With a Parent

Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent.

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 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 lis-----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.

The West Virginia Income Maintenance Manual, Chapter 9.1.A.2.a describes who cannot be included in a SNAP AG (emphasis added):

2. Who Cannot Be Included

The following individuals who reside with an AG are not considered AG members or are ineligible to be included in the AG. See item B below for treatment of these individuals' income.

a. Those Who Do Not Purchase and Prepare Food Together

Other individuals who **share living quarters with the AG, but who do not customarily purchase and prepare food with them are not included in the AG.** These individuals may apply as a separate AG. However, the exceptions described in item 1,b,(2) above must be considered.

Once the Claimant's custody plan switched from the summer schedule to the school schedule, his youngest son was no longer with him 50% of the time and no longer customarily having meals with the Claimant. The action of the Department to exclude the youngest son from the Claimant's SNAP AG and reduce the SNAP benefits accordingly is correct.

- 3) The West Virginia Income Maintenance Manual, Chapter 9.21.A.1 explains who is to be included in the WV Works Assistance Group, or AG, as follows, in pertinent part:

In cases of joint custody, only the custodial parent is included. The custodial parent is the one with whom the child(ren) lives more than 50% of the time in a given month. The custodial parent of any child may change from month to month. If the child lives with each parent exactly 50% of the time, the parents must decide which is the custodial parent.

The action of the Department to exclude the Claimant's youngest son from the Claimant's WV Works AG in September 2008, and reduce the WV Works benefit accordingly, is correct.

- 4) The West Virginia Income Maintenance Manual, Chapter 9.7.B defines the Income Group, or IG, for Qualified Child Medicaid as follows (emphasis added):

B. THE INCOME GROUP (IG)

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

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.**

The decision of the Department to terminate Medicaid for his youngest son was correct because the IG was incorrectly oriented with the Claimant instead of his ex-wife, who retained majority custody at the time of the Department's proposed action.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposed action to terminate Medicaid and reduce the SNAP and WV Works benefits of the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of April, 2009.

Todd Thornton
State Hearing Officer