



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D.
Cabinet Secretary

February 8, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 29, 2010. Your hearing request was based on the Department of Health and Human Resources' action to terminate your benefits received through the Supplemental Nutrition Assistance Program (SNAP) and Aid to Families and Dependent Children (AFDC) Related Medicaid due to your child's father being added to your case.

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 and benefit levels for the SNAP and AFDC-Related Medicaid Programs are based on current policy and regulations. SNAP regulations provide that 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 (assistance group) as that parent. For AFDC-Related Medicaid, when determining the countable income for a parent, only that parent's income and the income of their legal spouse are considered. (West Virginia Income Maintenance Manual Sections 9.1 and 9.18)

Information submitted at your hearing reveals that you are divorced from -----, and that he lived in your home at the time of the Department's determination. Your household consists of yourself, your child who is under 22 years of age, and ----- . ----- is the father of your child. Additionally, the evidence shows you returned requested verification regarding your loss of employment at Sam's Club in a timely manner.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to terminate your SNAP, and **reverse** the decision of the Department to terminate AFDC-Related Medicaid.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Tera Pendleton, [REDACTED] DHHR

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

-----,

Claimant,

v.

**Action Numbers: 10-BOR-2338 (SNAP)
10-BOR-2313 (AFDC-Related Medicaid)**

**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 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, and was convened on December 29, 2010 on a timely appeal filed November 17, 2010.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (SNAP) 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 benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

The Medicaid categorically related to Aid to Families with Dependent Children Program is designed to provide medical assistance to eligible families with children from the fetal stage 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

-----, Claimant's witness

Tera Pendleton, Department representative

Debra Kasyk, Department's witness

Christina Saunders, Department's witness

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its proposal to terminate the Claimant's Supplemental Nutrition Assistance Program (SNAP) benefits and AFDC-Related Medicaid benefits based on the addition of her child's father, -----, to the case.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapters 2.4, 9.1, 9.4, and 9.18

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Household Information screen from Department's computer system, and numerous case comments from same computer system
- D-2 Request for Assistance form, Verification Checklist form, letter from -----
- D-3 Notification letter dated October 15, 2010, Combined Application and Review Form dated October 15, 2010, Rights and Responsibilities Form dated October 15, 2010
- D-4 Pre-Authorization Notice dated August 9, 2010, Gas bill dated July 27, 2010
- D-5 Letter from ----- dated December 13, 2010
- D-6 Notification letter dated October 22, 2010

Claimant's Exhibits:

- C-1 Verification of Final Pay from [REDACTED]
- C-2 Lease Addendum dated October 7, 2010, and electric bill dated November 29, 2010
- C-3 Event history for -----from [REDACTED] Arbors

VII. FINDINGS OF FACT:

- 1) The Claimant was an active recipient of benefits for both herself and her child, who is under twenty two (22) years of age, through the Supplemental Nutrition Assistance Program (SNAP)

when, on October 15, 2010, she applied for AFDC-Related Medicaid (D-3). At that time, the Claimant reported that she was no longer employed with Sam's Club, and the Department requested that she verify certain information regarding the end of this employment. Also around this same timeframe, the Department determined that the Claimant was married to her child's father, -----, and that he was also living in the household. As a result, the Department determined that he must be included in determining her eligibility for both SNAP and AFDC-Related Medicaid benefits.

- 2) The Department provided the Claimant with a notification letter (D-3) dated October 15, 2010 which states in pertinent part:

This is to inform you that information listed below is needed to establish your eligibility and/or deductions for AFDC Related Medicaid.

Information Needed: STATEMENT FROM EMPLOYER STATING LAST DAY WORKED AND ALL MONIES THAT WAS OR WILL BE RECEIVED FOR OCTOBER FOR SERVICES RENDERED.

IF THIS INFORMATION IS NOT MADE AVAILABLE TO THIS OFFICE BY 11/14/10 YOUR APPLICATION WILL BE DENIED.

The Department recorded in its case comments (D-1) dated October 15, 2010 that the Claimant was requested to provide the employer verification mentioned above for both the SNAP and AFDC-Related Medicaid programs.

- 3) The Claimant's benefits were previously determined based on a two (2) person household, which included herself and her daughter. The addition of ----- to the cases involved also considering his unemployment compensation income as available to the household, which the Department contends rendered the Claimant's SNAP and AFDC-Related Medicaid ineligible based on excessive income.
- 4) Also a purported determining factor in this termination was that the Department found that the Claimant did not return the verification requested on October 15, 2010 regarding the end of her employment at [REDACTED]. The Department witness, Debra Kasyk, an Income Maintenance Specialist, explained that normally when a Medicaid case is found ineligible based on excessive income it can still be considered under the spend-down policy; however, because it was determined that certain requested verifications were not received by the Department, the Claimant was found totally ineligible and this option was not available to her.
- 5) The Claimant testified that she is divorced from -----, and contends that although he was living in her home at the time of the Department's determination, he should not be included in determining her eligibility for both SNAP and AFDC-Related Medicaid.
- 6) The Claimant also contends that she returned the verification regarding her terminated employment on two (2) separate occasions. She provided written evidence (C-1) which shows that the employer verification requested was stamped as received by the Department on November 10, 2010, which is prior to the November 14, 2010 deadline given in the Department's notice of request. The Department contends it did not receive this verification. In fact, the

Department had already terminated the Claimant's SNAP and AFDC-Related Medicaid eligibility on October 22, 2010, only seven (7) days after the written request for this verification was issued.

- 7) ----- testified that he and the Claimant were divorced on December 15, 2005. He added that he did not live with the Claimant from August 31, 2010 through October 6, 2010, but that he moved back into the home with her on October 7, 2010 and has been living there since that time. The Department contends it was never made aware of a divorce, and acted based on the information available at the time, that being that the Claimant and ----- were married; however, the Claimant's October 15, 2010 application for AFDC-Related Medicaid (D-3) clearly shows on page five (5) that the Claimant was divorced from ----- on December 20, 2005.
- 8) Ms. Kraszyk pointed out that the Department's records show (D-1, D-3) that the Claimant did not report that ----- was living in her household on October 15, 2010 when she applied for AFDC-Related Medicaid and was interviewed by a Department worker.
- 9) The Claimant contends that she believed that ----- could rightfully receive his benefits separate from her because they were divorced, and offered this belief to explain why she did not report that he was living in her household on October 15, 2010.
- 10) Policy in the West Virginia Income Maintenance Manual, Chapter 9.1.A.1.b.2 regarding SNAP eligibility, provides that 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.
- 11) The West Virginia Income Maintenance Manual, Chapter 9.4.A provides that, for AFDC Medicaid, all otherwise eligible dependent children and their otherwise eligible parent(s) who are living in the same household must be included in the AG. Parent is defined as a natural or adoptive parent.
- 12) Policy in the West Virginia Income Maintenance Manual, Chapter 9.18, sections A and B regarding AFDC-Related Medicaid eligibility, states in pertinent part:

A. THE ASSISTANCE GROUP (AG)

The same policy found in Section 9.4.A applies here. Those individuals who are required to be included or who choose to be included receive AFDC/U-Related Medicaid and will be in an AG. However, they are not all in the same AG. The following rules apply.

1. Parent(s)

Otherwise eligible married parents who live together are in the same AG. However, unmarried otherwise eligible parents must be in separate AG's [sic]. This is necessary to prevent illegal deeming from one unmarried parent to another.

B. THE INCOME GROUP (AG)

The income counted depends on the AG member. Each member listed shows the income which is counted to determine his eligibility. Only the income of the

individuals, including ineligible/illegal aliens, who live in the home with the AG member is counted.

1. Parent(s)

Count the income of:

- The parent(s)
- The legal spouse of the parent

VIII. CONCLUSIONS OF LAW:

- 1) The evidence shows that the Claimant and ----- were living in the same household with their daughter, who is under the age of twenty two (22), at the time of the Department's action, and that they were divorced.
- 2) SNAP policy regarding this type of living arrangement provides that all 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.
- 3) Although AFDC Medicaid policy provides that all otherwise eligible dependent children and their otherwise eligible parent(s) who are living in the same household must be included in the AG, policy regarding AFDC-Related Medicaid provides that only eligible married parents who live together are included in the same AG, and that unmarried eligible parents must be in separate AG's [sic]. Policy also provides that for AFDC-Related Medicaid, only the income of the Claimant and her legal spouse is considered when determining countable income for this program of assistance.
- 4) The Department's action to terminate the Claimant's SNAP and AFDC-Related Medicaid involved its decision to include ----- in both the SNAP and AFDC-Related Medicaid AGs of the Claimant. In doing so, -----' unemployment compensation was then considered as income against the Claimant's benefits, which then caused the Claimant's countable income to be excessive for both programs.
- 5) Additionally, the Department determined that certain verification was not returned. The evidence is clear in that the verification was returned timely. The Department did not act on that information and had already terminated the Claimant's eligibility.
- 6) The Department was correct in its decision to add ----- to the Claimant's SNAP case. Because ---- - lives in the home and is the father of the Claimant's child, and because that child is under the age of twenty two (22) years, policy requires that he be included in the AG, and that his income be considered.
- 7) The Department was not correct in its decision to add ----- to the Claimant's AFDC-Related Medicaid case and consider his income in determining her eligibility for that program of assistance. He was no longer the Claimant's legal spouse, and therefore he should not have been

added to her AG, and his income should not have been considered in determining her eligibility for AFDC-Related Medicaid.

- 8) Further, the Department was not correct in its decision to terminate the SNAP and AFDC-Related Medicaid for failure to return requested verifications. The verifications were returned prior to the deadline given by the Department for their return.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate the Claimant's SNAP, and **reverse** the decision of the Department to terminate her AFDC-Related 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, 2011.

**Cheryl Henson
State Hearing Officer**