



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**Board of Review**  
**150 Maplewood Avenue**  
**Lewisburg, WV 24901**

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

August 8, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 11, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your food stamp and SSI-Related 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 SSI-Related Medicaid Programs are based on current policy and regulations. Some of these regulations state as follows: Spouses who live together must be in the same AG. There are no exceptions. (Section 9.1A #1 b (2) of the West Virginia Income Maintenance Manual) For SSI-Related Medicaid, consider income of the ineligible spouse to determine if it must be deemed. (Section 9.19B of the West Virginia Income Maintenance Manual)

The information which was submitted at your hearing revealed that you and your spouse are residing together.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate your food stamp and SSI-Related Medicaid benefits.

Sincerely,

Margaret M. Mann  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Henrietta Martin, DHHR

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Numbers: 06-BOR-1453 & 1454**

**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 July 12, 2006 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 July 11, 2006 on a timely appeal, filed March 20, 2006. It should be noted that this hearing was originally scheduled for June 7, 2006. It was rescheduled at the Department's request for July 11, 2006. The hearing record was left open until July 14, 2006 in order for the Department to complete a home visit. The results of the home visit were received by the State Hearing Officer on July 12, 2006.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The Programs entitled Food Stamp and SSI-Related Medicaid are 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 food coupons to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

The SSI Related Medicaid Program is a segment of the Medicaid Program available to individuals who meet the requirement of categorical relatedness by qualifying as either aged disabled, or blind as those terms are defined by the Social Security Administration for purposes of eligibility for SSI.

**III. PARTICIPANTS:**

\_\_\_\_\_, Claimant

Cheryl McKinney, Front End Fraud Investigator, DHHR  
Henrietta Martin, Department Hearing Representative

Presiding at the Hearing was Margaret M. Mann, 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 was correct in terminating the claimant's benefits because of the onset of spouse's unearned income.

**V. APPLICABLE POLICY:**

Sections 9.1A #1 b (2) and 9.19B of the West Virginia Income Maintenance Manual  
7 CFR 273.8

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Department's Summary
- D-2 Case Comments dated 11/14/05
- D-3 Case Comments dated 12/05/05
- D-4 Notification Letter dated 12/07/05
- D-5 Case Comments dated 12/07/05
- D-6 Case Comments dated 12/14/05
- D-7 Case Comments dated 03/08/06 & 03/20/06
- D-8 Report from Cheryl McKinney dated 07/11/06
- D-9 Notification letter dated 03/09/06

**Claimant's Exhibits:**

- C-1 Insurance Statement
- C-2 Picture of Outbuilding

## VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of food stamps and SSI-Related Medicaid. Benefits were based on zero income. Included in the food stamp Assistance Group (AG) were the claimant and her spouse, \_\_\_\_\_.
- 2) \_\_\_\_\_ called the Customer Service Center November 14, 2005 to report he received a lump sum in the amount of \$1,600 from Worker's Compensation at 16% partial disability. Mr. \_\_\_\_\_ also advised the Customer Service Center that he was not aware of receiving any further payments so this reported lump sum was entered as an asset. (D-2)
- 3) On December 5, 2006, \_\_\_\_\_ spoke to a caseworker and reported he was receiving \$1,600 monthly. The worker explained the income had to be counted monthly and it would close the food stamp case and put \_\_\_\_\_'s Medicaid in a spenddown status. (D-3)
- 4) A letter was sent to the claimant dated 12/07/05 (D-4) which reads in part:

Your food stamps will stop. You will not receive this benefit after December 2005.  
Reason: Income is more than the net income limit for you to receive benefits.

- 4) \_\_\_\_\_ called on December 7, 2005 to report \_\_\_\_\_ was not living in the home. Ms. \_\_\_\_\_ advised the worker that his clothes were still there and he took a shower at the house and visits but doesn't sleep there. Ms. \_\_\_\_\_ advised the worker Mr. \_\_\_\_\_ stayed in the outbuilding after Thanksgiving and she wanted to keep her food stamps and medical card. (D-5) After receiving another call on December 14, 2005 from the claimant reporting her husband was not in the home, the worker removed him from the food stamp AG and referred the case to a Front End Fraud Unit for investigation. (D-6)
- 6) On March 8, 2006, the findings of the investigation were received. The referral stated there was no outbuilding and Mr. \_\_\_\_\_ resided in the home. Case closure was initiated. A letter was sent to \_\_\_\_\_ dated 03/09/06. It reads in part:

Your food stamps will stop. You will not receive this benefit after March 2006. Reason: Income is too much for you to receive benefits.

Your SSI Related Medicaid for the Aged, Blind and Disabled will stop. You will not receive this benefit after March 2006. Reason: Income is more than the net income limit for you to receive benefits.

- 7) \_\_\_\_\_ requested a hearing on March 20, 2006 and benefits were continued.
- 8) Testimony from Ms. McKinney revealed that she visited the area where the claimant

lived. She did not speak to Ms. \_\_\_\_\_. She viewed the residence and observed no outbuilding.

- 9) Testimony from Ms. \_\_\_\_\_ revealed that the land she lives on does have outbuildings. (C-1 and C-2) Her husband is staying in one of the outbuildings.
- 10) The hearing record was left open in order for Ms. McKinney to complete another visit. The visit was completed 07/11/06. (D-8)

11) Ms. McKinney viewed the outbuilding \_\_\_\_\_ is allegedly living in.  
She writes

in her report: "He did not invite me to enter the small building. I viewed through the door a large amount of clothing hanging across the back of the building, with a small bed underneath. I also viewed a commode beside the bed, and a full sized refrigerator beside that. These items took up most of the room. He did not offer for me to enter any further and seemed real agitated at me being there. I did notice electricity in the building, but could not verify if water was connected. He stated dwelling had water." (D-8)

- 12) Ms. McKinney took a statement from Ms. \_\_\_\_\_. It reads in part: "My husband, \_\_\_\_\_ moved out into an outbuilding on the edge of property – it is approx. 10 x 10 ft. He has electricity & water out there. He also has a refrigerator & microwave. He washes his clothes here. He may come over here a couple of days a week. He pays all the bills. He comes over during the day & watches TV. ....Some days he will come out here and sit all day & watch TV. We can't get along. We aren't getting divorced yet. He doesn't sleep here at night. He does eat meals here sometimes. When meals are cooked – he does the cooking. ....He showers here. He comes out here about every other day usually, unless he is gone visiting friends. Sometimes he does this for weeks at a time." (D-8)
- 13) Section 9.1A #1 b (2) of the West Virginia Income Maintenance Manual reads in part that 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. The 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. Spouses who live together must be in the same AG. There are no exceptions.

- 14) Section 9.19B of the West Virginia Income Maintenance Manual reads in part that for the Income Group for SSI-Related Medicaid with an eligible individual with ineligible spouse – Consider income of the ineligible spouse to determine if it must be deemed.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy dictates that spouses living together must be in the same AG.
- 2) SSI-Related Medicaid regulations specify that income of the ineligible spouse is considered in order to determine if it must be deemed.
- 3) The claimant and her spouse are recipients of food stamps. The claimant also is a recipient of SSI-Related Medicaid.
- 4) Once the claimant's spouse started receiving income of \$1,600 per month, the claimant reported he was living in an outbuilding on the property.
- 5) Testimony and evidence presented at the hearing revealed there is an outbuilding on the property. It is fixed up as if someone could reside there.
- 6) The State Hearing Officer does not find the claimant's testimony credible that her spouse is residing in the outbuilding. Her statement is contradictory. (See # 12 Part VII. above) Her spouse pays all of the bills, he showers in the house, he cooks some of his meals in the house, he watches TV there, etc. This is the same house where the claimant resides.
- 7) There was no credible testimony or evidence provided at the hearing that would change the Department's determination

### **IX. DECISION:**

It is the finding of the State Hearing Officer that the Department is upheld in the decision to terminate the claimant's food stamp benefits and require a spenddown for the SSI-Related Medicaid Program. The action described in the notification letter dated March 9, 2006 will be taken.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 8th Day of August, 2006.**

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**Margaret M. Mann  
State Hearing Officer**