



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 East Third Avenue  
Williamson, WV 25661

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

January 28, 2016



RE: [REDACTED] v. WV DHHR  
ACTION NOS.: 15-BOR-3670 (Medicaid)  
15-BOR-3671 (SNAP)

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Sarah McCallister, WV DHHR, [REDACTED] County Office

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

██████████,

**Appellant,**

v.

**ACTION NOS.: 15-BOR-3670 (Medicaid)  
15-BOR-3671 (SNAP)**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**INTRODUCTION**

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (WV DHHR) Common Chapters Manual. This fair hearing was convened on January 27, 2016, on an appeal filed December 22, 2015.

The matter before the Hearing Officer arises from the decision by the Respondent not to add two of the Appellant's children to his Medicaid and Supplemental Nutritional Assistance Program (SNAP) assistance groups because the children allegedly lived with their mother in another WV county.

At the hearing, the Respondent appeared by Representative Sarah McCallister, Economic Service Worker at the WV DHHR, ██████████ County Office. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were his wife ██████████, and his children ██████████ and ██████████. All participants were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 WV DHHR Income Maintenance Manual (IMM), Chapter 9, §9.1.A.1.b(2)

**Appellant's Exhibits:**

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

## **FINDINGS OF FACT**

- 1) The Appellant and his wife applied for SNAP and Medicaid benefits on behalf of themselves and their children. They subsequently learned that two of the Appellant's children, who lived with him and who were the children of a previous marriage, received benefits in their mother's case.
- 2) The Appellant maintained that he had sole custody of the two children in question, and that they have lived with him continuously since he and his ex-wife divorced in 2011.
- 3) The Appellant's ex-wife, the mother of the two children, lives in [REDACTED] County, WV.
- 4) The Department's representative did not present evidence to suggest these children lived anywhere other than with the Appellant. The Department's representative concurred that the children lived with the Appellant and argued that they should be added to the Appellant's SNAP and Medicaid assistance groups.

## **APPLICABLE POLICY**

WV Income Maintenance Manual (IMM), Chapter 9, §9.1.A.1.b(2) reads as follows:

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.

There is no required minimum/maximum amount of time the child must spend with a parent for the child to be included in the SNAP AG. If no one is receiving any SNAP benefits from the Department for the child, it is assumed that the living arrangements are not questionable and the child is added to the SNAP AG that wishes to add him or her. If the child is already listed in another SNAP AG or the other parent wishes to add the child to his or her SNAP AG, the parents must agree as to where the child "lives" and ultimately, to which SNAP AG he or she is added. Where the child receives the majority of his meals or the percentage of custody must not be the determining factor in which parent receives SNAP for the child.

## **DISCUSSION**

The Appellant requested a fair hearing when he learned that two of his children, from a previous marriage, received SNAP and Medicaid in their mother's assistance group. He testified that these children have lived with him continuously since he and his ex-wife divorced several years ago.

The two children testified that they lived with their father and step-mother, and had done so since the divorce. Both of them testified that they rarely spoke to their mother on the telephone, and had not seen her in several years.

The Department's representative testified she concurred that the Appellant's children from his previous marriage lived with the Appellant. She stated that the worker who took the Appellant's application for SNAP and Medicaid attempted to have the ██████ County office of the WV DHHR remove the children from their mother's assistance groups, but workers there refused to remove them unless a fair hearing decision determined the children lived with the Appellant.

### **CONCLUSION OF LAW**

The Department should have added to the Appellant's SNAP and Medicaid assistance groups his two children from a previous marriage, pursuant to WV IMM Chapter 9, §9.1.A.1.b(2).

### **DECISION**

It is the decision of the state Hearing Officer to **reverse** the Department's decision not to add the Appellant's children to his Medicaid and WV WORKS assistance groups.

**ENTERED this 28<sup>th</sup> Day of January 2016.**

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**Stephen M. Baisden**  
**State Hearing Officer**