



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
State Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704
April 8, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

[REDACTED]

[REDACTED] WV [REDACTED]

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 6, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the WV Works assistance check Program.

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 WV Works assistance check Program are determined based on current regulations. One of these regulations is that the child must be living with a specified relative in a place established as the relative's home (WV Income Maintenance Manual Section 15.2 B).

The information which was submitted at the hearing revealed that it has not been legally established by the court that you are the grandmother of the child for which you have applied for benefits under the WV Works assistance check Program.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your application for the WV Works assistance check Program.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Pauline Porter, Dept. Hearing Rep.

NAME: [REDACTED]

ADDRESS: [REDACTED] WV [REDACTED]

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 6, 2005 for Ms. [REDACTED]

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 originally convened on April 6, 2005 on a timely appeal filed February 17, 2005.

It should be noted here that any benefits under the WV Works assistance check Program have been denied pending the results of this hearing.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled WV Works assistance check is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

The TANF Program is designed to provide financial and/or medical assistance to eligible families with children 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 criteria.

III. PARTICIPANTS

1. [REDACTED] Claimant.
2. Pauline Porter, Dept. Hearing Rep.
3. Betty Porter, BCSE Supervisor.

Presiding at the hearing was Thomas M. Smith, 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 took the correct action to deny the application for the WV Works assistance check Program.

Page 2

V. APPLICABLE POLICY

WV Income Maintenance Manual Sections 15.2.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Exhibit #1 Copy of Income Maintenance Manual Section 15.2 (4 pages).

" #2 Copy of Civil Action No. 03-D-322 (4 pages).

" #3 Copy of birth certificate for [REDACTED]

" #4 Copy of Declaration of Paternity Affidavit for [REDACTED]

" #5 Copy of notification letter 2-16-05 (3 pages).

Exhibit #C1-1 Copy of Amended Petition for Paternity, Child Support and Reimbursement Support (8 pages).

" #C1-2 Copy of Declaration of Paternity Affidavit for [REDACTED]

VII. FINDINGS OF FACT

1. Claimant applied for assistance under the WV Works Program on 2-15-05 and was denied due to not being a specified relative for the child she was applying for [REDACTED] with notification of denial mailed on 2-16-05 (Exhibit #5).

2. [REDACTED] was determined to be the child of [REDACTED] by virtue of his name being on the birth certificate (Exhibit #3) and his signature along with the signature of the mother [REDACTED] on a Declaration of Paternity Affidavit signed on 3-6-97, the day after the birth of [REDACTED] (Exhibit #4).

3. The claimant and the Bureau for Child Support Enforcement (BCSE) filed action 1-24-05 in the Family Court of [REDACTED] to establish child support and the court found that the claimant's son [REDACTED] had signed a Declaration of Paternity on 10-4-02 (Exhibit #C1-2) and that a blood test on 2-24-03 showed a statistical probability of 99.96% that he was the father of [REDACTED] and the court ordered that the BCSE should take action to disestablish [REDACTED] as the father of the child in question and the claimant was granted temporary custody (Exhibit #2).

4. The claimant testified that she is the grandmother of the child in question and presented a copy of a petition which showed that the BCSE is requesting that [REDACTED] be disestablished as the father of the child and that [REDACTED] be established as the father of the child (Exhibit #C1-1).

5. The claimant testified that it is unfair to her and the child that she cannot receive an assistance check for the child.

Page 3

6. Ms. Porter, BCSE Supervisor, testified that the petition presented by the claimant was a request filed by BCSE for a hearing to establish Mr. [REDACTED] as the father and to disestablish Mr. [REDACTED] as the father but that a hearing has not been set and no final action has been taken.

7. No legal basis has been established in court to show that Mr. [REDACTED] is the father of the child in question. Thus, it cannot be established that the claimant is a specified relative of the child in question.

CONCLUSIONS OF LAW

1. WV Income Maintenance Manual Section 15.2 S states, in part:

"In order to receive cash assistance, AFDC/U Medicaid or AFDC/U-Related Medicaid as a dependent child the following requirements must be met....

B. LIVING WITH A SPECIFIED RELATIVE (WV WORKS, Medicaid, AFDC-Related Medicaid)

The child must be living with a specified relative in a place established as the relative's home. A specified relative is defined below.

- Natural or adoptive parents.....
- Blood relative: Those of half-blood, brothers, sisters, grandparents, great-grandparents, great-great-grandparents, uncles or aunts, great-uncles or aunts, great-great uncles or aunts, nephews or nieces, first cousins, first cousins once-removed.
- Legal step-parent, step-brother or step-sister.
- Legal spouses of any person named in any of the above groups except for spouses of step-relatives.
- NOTE: Legal custody or guardianship of a child does not, in itself, qualify a person as a specified relative. A relative of the father of a child born out of wedlock can qualify as a specified relative only if the child's paternity has been established.

VIII. DECISION

Based on the evidence and testimony presented, it is the decision of the State Hearing Officer that the Department has taken the correct action to deny the application for the WV Works assistance check Program and the Department's action is upheld.

Page 4

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

