



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 16, 2006

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 2, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits through the WV WORKS 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 for the WV WORKS Program is based on current policy and regulations. Some of these regulations state that caretaker relatives, who are not natural or adoptive parents, and stepparents, when the parent is not in the home, may choose to be included or excluded from the assistance group (AG). Additionally, the caretaker relative can choose to include other minor child(dren) in the household who are not otherwise required to be included in the AG. A separate case is not established for the child(ren). This choice must be made at the time of application, but once the decision is made, the decision is binding until the next annual, full-scale redetermination, regardless of changes in the circumstances of the caretaker relative or the child (ren). When the case is closed and reopened before completion of a full-scale redetermination, the last decision is binding until one year from the date the last decision was made [West Virginia Income Maintenance Manual § 9.21].

The information submitted at your hearing reveals that your February 23, 2006 application for WV WORKS benefits was denied due to excessive income. Your nephews were included in the WV WORKS AG resulting from a December 2005 application and they cannot be removed from the AG until the next full-scale redetermination (12 months). Further, policy states that a separate case cannot be established for your granddaughters.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your application for benefits through the WV WORKS Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Hans Wikle, FSS, DHHR

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

____,

Claimant,

v.

Action Number: 06-BOR-1355

**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 June 16, 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 May 2, 2006 on a timely appeal filed February 28, 2006.

II. PROGRAM PURPOSE:

The program entitled WV WORKS is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

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 friend (observing)
Hans Wikle, FSS, DHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to deny the Claimant's application for benefits through the WV WORKS Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 9.21

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

Exhibit –A OFS-WVW-10, WV WORKS Caretaker Relative Option
Exhibit – B WVIMM, Chapter 9.21
Exhibit – C Notice of Decision dated 2/24/06
Exhibit – D Hearing / Grievance Record Information

VII. FINDINGS OF FACT:

- 1) On or about February 24, 2006, the Claimant was notified via a Notice of Decision, Exhibit – C, that her application for WV WORKS benefits was denied. This notice states in pertinent part:

Your 2/23/06 application for WV WORKS has been DENIED.

Income is too much for you to receive benefits.

- 2) The Department contends that the Claimant's WV WORKS Assistance Group, hereinafter AG, was established when she applied for WV WORKS benefits for her two nephews in December 2005. The Claimant reported at the time of application that her nephews' RSDI would be directed through her effective March 2006. This was verified by the Social Security Administration and the Caretaker Relative case was approved on December 23, 2005. It was noted by the Department, as verified in Exhibit –A, that the Claimant chose not to be included in the WV WORKS AG (see Exhibit – A) at the time of application.

- 3) On February 23, 2006, the Claimant applied for WV WORKS for her two (2) granddaughters who were placed in her custody by the circuit court. The Department advised the Claimant that she could not have a separate WV WORKS case but that she could choose to add her granddaughters to the existing case or exclude them from the AG and receive nothing. The Department contends that the WV WORKS AG was set in December 2005 and because it is binding for 12 months, the nephews could not be removed. The Claimant chose to add her granddaughters to the WV WORKS AG and she was provided an auxiliary benefit for the period 2/23/06 to 2/28/06.
- 4) The Claimant's Caretaker Relative WV WORKS case closed effective 2/28/06 due to excessive income as the nephews' RSDI (Social Security income) included in the case exceeds the maximum allowable income for an AG of 4 (2 nephews & 2 granddaughters). Because policy allows other minor child (who are not otherwise required to be included in the AG) choose to be include, the crux of this case is whether the nephews must remain in the AG.
- 5) Information included in Exhibit – A, WV WORKS Caretaker Relative Option, explains that as a Caretaker Relative, the Claimant was presented the option of being included in the WV WORKS AG or being excluded from it. This document goes on to say – “Further, I understand that this decision is binding for 12 consecutive months, beginning with the month for which I receive the first payment, regardless of changes in my income, assets or other circumstances and may not be changed even if my case is closed and I reapply within the 12-month period.”
- 6) West Virginia Income Maintenance Manual, Chapter 9.21.A.2, provides information regarding WV WORKS Eligibility Determination Groups and specifies *Who May Choose to be Included* in the AG. This policy states that Caretaker Relatives, who are not natural or adoptive parents, and stepparents when the parent is not in the home, may choose to be included or excluded from the AG.

If there is another minor child(dren) in the household who is not required to be included by item 1 or this item and the caretaker relative requests WV WORKS benefits for him, the caretaker relative may choose to include him in the AG. A separate case is not established for the child(ren) [emphasis added].

The two groups of individuals identified above (Caretaker Relatives and other minor children not required to be included) may choose to be included or excluded at the time of application. Once the decision is made, the decision is binding until the next annual, full-scale redetermination, regardless of changes in the circumstances of the caretaker relative or the child(ren). When the case is closed and reopened before completion of a full-scale redetermination, the last decision is binding until one year from the date the last decision was made.

- 7) West Virginia Income Maintenance Manual, Chapter 9.21.A.1 (Who Must Be Included in the AG) includes a NOTE which states – When an individual is required to be in two or more AGs, the AGs must be combined.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that the Caretaker Relative and other minor children in the household (who are not required to be included in the AG) may choose to be included in the AG, however, once the decision is made, the decision is binding until the next annual, full-scale redetermination (12 months), regardless of changes in the circumstances of the caretaker relative or the children. Further, policy explains that when the case is closed and reopened before completion of a full-scale redetermination, the last decision is binding until one year from the date the last decision was made.
- 2) The evidence reveals that while the Claimant elected to be excluded from AG at the time of application, her two nephews were included in the AG and eligibility for WV WORKS was established in December 2005. Once the Claimant applied for benefits and included her nephews in the AG, that decision was binding for 12 months. Per policy, the nephews and their income could not be removed from the AG because of the clause in policy that refers directly to the children and that the decision to include them is binding for 12 months – “regardless of changes in the circumstances of the caretaker relative or the children [emphasis added]. Because the nephews’ RSDI was redirected to the Claimant effective March 1, 2006, the AG of 4 was determined to be over the income guidelines to receive WV WORKS cash assistance. According to policy, the Claimant would not have been eligible to receive WV WORKS benefits for her granddaughters even if her case with the nephews had been closed.

IX. DECISION:

While it appears as though the Agency followed policy as written, I am unconvinced that the intent of this policy is consistent with the results. If the Claimant would have been awarded custody of her granddaughters first, and then received custody of her nephews who were receiving RSDI, she could have elected to exclude the nephews (and their income) from the AG. Thus, the AG would not have been determined to be over the income guidelines. The OFS-WVW-10 (Caretaker Relative Option) states that only the Caretaker Relative is bound by the decision to be included or excluded from the AG, but policy clearly indicates that minor children in the home are included in the 12 month commitment.

After reviewing the information presented during the hearing, and the applicable policy and regulations, I am ruling to **uphold** the action of the Department in denying your application for benefits through the WV WORKS Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of June, 2006.

**Thomas E. Arnett
State Hearing Officer**