



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 16, 2005

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 13, 2006. Your hearing request was based on the Department of Health and Human Resources' action to close your WV Works assistance check case effective April 30, 2006 and to determine a period of ineligibility from March through July, 2006 with \$473.78 as a resource in August, 2006.

In arriving at a decision, the State Hearings 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 assistance check Program is based on current policy and regulations. Some of these regulations state as follows: the number of months of ineligibility is determined by dividing the lump sum amount by the 100% FPL for the AG size (WV Income Maintenance Manual Section 10.24).

The information which was submitted at your hearing revealed that regulations do not allow for your additional expenditures of the countable lump sum amount to be deducted and the period of ineligibility cannot be shortened.

It is the decision of the State Hearings Officer to uphold the action of the Department to close your WV Works assistance check case effective April 30, 2006 and to determine a period of ineligibility from March through July, 2006 with \$473.78 as a resource in August, 2006.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Kelly Scott, Department Hearing Rep.
[REDACTED]

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

—,

Claimant,

v.

Action Number: 06-BOR-1796

**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 13, 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 June 13, 2006 on a timely appeal, filed May 4, 2006.

It should be noted here that the WV Works benefits were closed pending a hearing decision.

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:

1. _____, Claimant.
2. _____ Claimant's attorney.
3. Kelly Scott, Department Hearing Representative.

Presiding at the Hearing was Thomas M. Smith, 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 took the correct action to close the WV Works assistance check (TANF) case effective April 30, 2006 due to receipt of lump sum payment and to establish a period of ineligibility from March through July, 2006 with \$478.78 as a resource in August, 2006.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Sections 10.24.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- I. Copy of WV Income Maintenance Manual Section 10.24 D, 8 (9 pages).
- II. Copy of hearing summary.
- III. Copy of notification letters dated 4-6-06 (2 pages).
- IV. Copy of settlement agreement and checks (2 pages).

Claimant's Exhibits:

Cl-1 Copy of payment to _____ DDS, MS on 11-3-05.

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient of WV Works cash assistance (TANF) when she was in the local office on 3-28-06 to report receipt of a lump sum payment from a settlement agreement in the amount of \$13,000 received on 3-27-06.
- 2) The claimant provided a settlement statement (Exhibit #IV) which showed funds paid out totaling \$4,083.91 (\$1,779.82 to _____ \$536.06 to _____ \$105.75 for copy cost to _____ attorney-at-law, \$1,662.28 to WV Medicaid lien). Remaining funds totaled \$8,916.09 less 1/3 for attorney fees (\$2,942.31) with a balance due the claimant in the amount of \$5,973.78.

- 3) The caseworker, Ms. Scott, determined that the lump sum payment policy applied to the \$5,973.78 balance and divided that amount by 100% of the Federal Poverty Level (FPL) for the two (2) Assistance Group (AG) members (\$1,100), resulting in 5.43 months of ineligibility with \$473.78 counting as income in the month after the last month of ineligibility. Ms. Scott testified that the claimant is not included in the AG as she receives SSI and is not included in the check but that the lump sum must be counted toward the AG. Ms. Scott also testified that the claimant reported to her that she had to pay her mother back for glasses and dental work which was unrelated to the settlement.
- 4) Ms. Scott determined that the claimant was determined ineligible for WV Works assistance check (TANF) beginning the first month of receipt (March, 2006) through July, 2006 with a resource of \$473.78 in August, 2006.
- 5) Ms. Scott initially determined ineligibility for May through September, 2006 but corrected her determination to show that ineligibility began the first month of receipt (March, 2006) and extended through July, 2006 with the resource of \$478.73 in August and issued a corrected notification letter (Exhibit #III).
- 6) The claimant testified that she had to pay someone to mow her grass at \$15 to \$20 for a total of six (6) times, that she had to pay for rides to pick up medicine and go to the store totaling approximately \$350, and that she paid \$4,227 to her mother for reimbursement for her daughter's braces, which her mother had paid for with credit. The claimant's attorney provided a receipt for the amount paid on the braces (Exhibit #CI-1). The claimant testified that she paid her mother back around \$5,000 for household bills and expenses she incurred.
- 7) The claimant's attorney argued that while the orthodontic work was unrelated to the accident, that amount along with other expenses paid by the claimant's mother should be deducted from the lump sum amount. The claimant's attorney argued that he could have itemized the expenses paid for the claimant by her mother as a third party recipient, that glasses were purchased for the children, that the claimant paid \$5,000 to her mother for expenses and paid \$775 for additional medical expenses.
- 8) WV Income Maintenance Manual Section 10.24, D 11 states, in part:

"Lump Sum Payments.

The lump sum payment policy applies to applicants, when the lump sum is received in the month of application, and to all recipients.Because the client is expected to use the lump sum for general living expenses, a period of ineligibility must be calculated.....

The OFS-RR1 notifies all applicants, recipients and disqualified persons, who would otherwise be required to be included in the AG, of the lump sum payment policy. However, the Worker must also advise the client of the lump sum payment policy when the client notifies the Worker of receipt, or the possibility of receipt, of a lump sum payment.....

The number of months in the period of ineligibility is determined by dividing the lump sum amount by the 100% FPL for the AG size.....

For any partial month remaining after the division, the amount of the lump sum payment which remains is counted as income. The number of months the case is ineligible, because of the

receipt of the lump sum payment, and the amount of income counted for any remaining partial month, is determined as follows.

a. Determining Countable Amount

The total amount of the lump sum payment is counted, except for the amount used as described below. The following portions of a lump sum payment are not counted.

- Lump sum payments that are earmarked and used for the purpose for which they are intended (i.e., monies for back medical bills resulting from injury, or funeral and burial costs) are deducted. In addition, lump sum payments that are intended and used for replacement or repair of an asset (e.g., monies to replace a defective automobile) are deducted.
- Any of the lump sum funds, obligated and used for legal fees as a result of the efforts of the attorney to obtain the lump sum payment, are deducted.....

b. Computing the Period of Ineligibility

After applying appropriate exclusions, disregards and deductions to other income received for the month, add the lump sum payment to all other monthly income. When the total amount is less than the payment amount for the number in the WV Works AG, the lump sum payment is counted as income in its entirety for one month.

When the total amount is greater than the appropriate 100% FPL, divide the lump sum payment by the appropriate 100% FPL. The AG is ineligible for the full number of months equal to the result in the division. Ineligibility begins the month of receipt.

When a fractional amount remains, there is an amount that must be counted as income in the month following the month the period of ineligibility ends.....

The persons in the AG when the lump sum payment is received, remain ineligible for the period determined by the above procedures, regardless of any changes which may occur during that period, unless the period of ineligibility is shortened as found below in item c.....

c. Shortening the Period of Ineligibility

The period of ineligibility may be shortened only for the two following reasons and by the following procedures:

(1) Reasons

When all or part of the lump sum payment becomes unavailable to the AG, due to circumstances beyond its control, as specified below, the period of ineligibility is shortened. This may be done at any point between the time the lump sum payment is received and the period of ineligibility expires..... The lump sum amount is considered unavailable only in the following situations:

- The lump sum payment was, totally or in part, destroyed by fire, flood, or other natural disaster.....
- The lump sum payment was, totally or in part, stolen from the AG.....

- A member of the AG, or an individual who would otherwise be required to be included, gained access to all or part of the lump sum payment, abandoned the remaining AG members and left them without access to it.....
- The lump sum payment has been or will be expended, totally or in part, to meet a life-threatening situation. To meet this criteria for shortening the period of ineligibility, it must be shown that the funds in question were used or will be used to avert a life-and-death situation for a AG member or a situation which is seriously detrimental to the health of a AG member.

NOTE: For cases involving life-threatening situations, the OFS Policy Unit must be contacted in writing. The memorandum must fully explain the situation and include: how the money was or will be spent, the date spent or to be spent and the nature of the life-threatening situation. The final decision is made by the Director of the Policy Unit. Examples of situations which have been approved are: purchase of a refrigerator to store a baby's milk, medical needs, purchase of vehicles for regular ongoing visits to medical facilities. If the worker has any doubt about referring a case to the Policy Unit, he must make a referral."

- 9) The area of dispute involves whether the amounts paid by the claimant for reimbursement to her mother and for other items may be deducted from the lump sum amount which is considered available to meet the needs of the AG over the ineligibility period. The State Hearing Officer finds that such amounts are not deductible under the lump sum payment policy.

VIII. CONCLUSIONS OF LAW:

- 1) WV Income Maintenance Manual Section 10.24 D, 11, a states that portions of the lump sum payment which are deducted include money earmarked and used for the purpose for which they are intended (such as back medical bills, funeral or burial costs), that part which is used for replacement or repair of an asset, and the amount obligated and used for legal fees as a result of the effort of the attorney to obtain the lump sum payment. The claimant provided verification of the total amount of lump sum payment and amounts deducted via the settlement agreement (Exhibit #IV) and was properly given the allowable deductions from the lump sum payment, resulting in a countable amount of \$5,973.78.
- 2) WV Income Maintenance Manual Section 10.24 D, 11, b provides for computing the period of ineligibility and requires that the countable lump sum amount (\$5,973.78) be divided by the 100% FPL amount for the AG (\$1100 for two (2) AG members) which resulted in an ineligibility period of five (5) months with \$473.78 remaining as a resource for the month following the last month of ineligibility. The claimant is ineligible from March through July, 2006 with a resource of \$473.78 in August, 2006.
- 3) WV Income Maintenance Manual Section 10.24 D, 11, c provides the reasons for shortening the period of ineligibility and the only basis which the claimant could be considered for shortening the period of ineligibility would be the life-threatening situation. The purchase of glasses, braces, and other expenses for which the claimant may have used the lump sum funds for or reimbursed her mother for does not qualify as life-threatening situations and the caseworker was correct not to refer the case to the OFS Policy Unit for possible shortening of the period of ineligibility.

- 4) There is no other basis under the lump sum policy located in WV Income Maintenance Manual Section 10.24 for allowing any additional deductions from the \$5,973.78 lump sum amount.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to close the WV Works cash assistance check (TANF) case effective 4-30-06 and to determine a period of ineligibility from March, 2006 through July, 2006 with a \$478.73 resource in August, 2006.

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 M. Smith
State Hearing Officer**