



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 6, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 26, 2007. Your hearing request was based on the Department of Health and Human Resources' action to terminate your WV Works Cash Assistance and your monthly allotment of food stamp benefits due to excessive assets.

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 WV Works Cash Assistance and the Food Stamp Program is based on current policy and regulations. Some of these regulations state as follows: For Food Stamps: Jointly Owned Assets- when all joint owners are in the AG, the total equity is counted, unless one of the joint owners is a WV Works or SSI recipient. When an AG has at least one member who is authorized to receive benefits from WV Works, the AG is categorically eligible. For WV Works: An ES-NL-C is used for client notification of all adverse actions resulting in AG closure. If the closure is due to excessive assets, the notification letter must specify the asset limit and the total value counted for all the client's assets.

The information which was submitted at your hearing revealed that the Department failed to send proper adverse action notice on the proposed termination of your WV Works Cash Assistance benefits due to excessive assets; therefore you continued to be eligible for WV Works pending proper notification, and categorically eligible for food stamps due to an AG member being authorized to receive WV Works Cash Assistance benefits.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate your WV Works Cash Assistance and Food Stamps.

Sincerely,

Cheryl McKinney
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Debra Vasquez, [REDACTED] DHHR

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

_____,

Claimant,

v.

**Action Number: 07-BOR-1459
07-BOR-1460**

**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 26, 2007 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 26, 2007 on a timely appeal, filed May 7, 2007.

It should be noted here that the claimant's benefits have been continued at the previous level pending the outcome of the Fair Hearing.

II. PROGRAM PURPOSE:

The Program entitled Food Stamp is 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

The Program entitled West Virginia Works is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health and 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

Debra Vasquez, Family Support Specialist, [REDACTED] DHHR

Brenda Toppings, Family Support Supervisor, [REDACTED] DHHR

Bill Kessell, Family Support Supervisor, [REDACTED] DHHR

Brandi Seabolt, Family Support Specialist, [REDACTED] DHHR

Joann Grindstaff, Family Support Specialist, [REDACTED] DHHR

Presiding at the hearing was Cheryl McKinney, 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 is correct in their action to terminate the Claimant's WV Works Cash Assistance and Food Stamp benefits.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 11.5

WV Income Maintenance Manual Section 6.3B

WV Income Maintenance Manual Section 6.3C2

WV Income Maintenance Manual Section 1.4.R.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

Exhibit A Notification letter dated April 30, 2007

Exhibit B Letter from UMWA dated February 1, 2007

Exhibit C Copy of Tax Receipt

Exhibit D Notification letter dated May 8, 2007 (6 pages)

Exhibit E Copy of land contract dated February 24, 2005

Exhibit F Copy of letter from DHHR dated May 11, 2007

Exhibit G Copy of deed dated March 23, 2005

Exhibit H Copy of hearing request form dated May 15, 2005

- Exhibit I Copy of IGBR29 form
Exhibit J Copy of WV Income Maintenance Manual Section 11.4
Exhibit K Copy of WV Income Maintenance Manual Section 11.3
Exhibit L Copy of Case Comments dated from August 2004 through May 2007
Exhibit M Copy of AARP Real Property Rapids screens from June 2004 through February 07
Exhibit N Copy of Rights and Responsibilities form dated May 7, 2007
Exhibit O Copy of Unearned Income screens AFUI from 1996 to present

Claimant's Exhibits

- C-1 Copy of letter from Raleigh County Assessor's Office dated June 25, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant was receiving WV Works Cash Assistance for her Granddaughter as a Caretaker Relative and Food Stamps when in April 2007 she moved from [REDACTED] County to [REDACTED] County. The Department scheduled a "transfer in" redetermination interview (Exhibit A) for the month of May 2007. The Claimant reported during this interview that she was part owner along with her granddaughter of real property at _____ in [REDACTED] County. She verified the value of this property with a tax ticket (Exhibit C) as \$4440.00. The Department entered this information into the computer as non-homestead property jointly owned.
- 2) The Department sent the Claimant a notification letter (Exhibit D) dated May 8, 2007 that included the following information:

WV Works

Action: We have reviewed your eligibility based on Section 2.1 of the Income Maintenance Manual and determined that effective 06-01-07 your WV Works benefits will REMAIN THE SAME. Your monthly amount will remain at: \$262.00

The following is the list of individuals who are eligible for this benefit. _____

FOOD STAMPS

Your Food Stamps will stop. You will not receive this benefit after May 2007.

Reason: The amount of assets is more than is allowed for this benefit. Your income has increased.

- 3) The Department testified during the hearing that the closure letter for WV Works Cash Assistance did not go to the client due to a problem with the computer system when everything was entered on the same day. No notice was ever sent to the Claimant

notifying her of the proposed adverse action termination of her WV Works Cash Assistance due to excessive assets.

- 4) The Claimant testified that she moved off the property at _____ in August 2006 when she got married. She stated she reported this to the Department; however the only asset the Department had entered into the computer system was the husband's property at _____, which was being sold on a land contract. The Claimant testified she separated from her husband in March 2007 and moved back to [REDACTED] County, and again reported the property to the Department during the May 2007 redetermination interview.
- 5) The Department contends that the Claimant never reported the property at _____ until May 2007, and provided copies of case comments and Rapids screens (Exhibit L and Exhibit M) to support their claim.
- 6) WV Income Maintenance Manual Section 6.3 states in pertinent part:

WHAT CONSTITUTES AN ADVERSE ACTION:

An ES-NL-C is used for client notification of all adverse actions except those specified in 6.3C,2. Adverse Actions are defined as follows:

Food Stamp Benefits: AG Closure

WV Works: AG Closure

Note: If the closure is due to excessive assets, the notification letter must specify the asset limit and the total value counted for all the client's assets.

- 7) WV Income Maintenance Manual Section 1.4.R.3 states in pertinent part:

Categorical Eligibility

a. Who is Eligible

(1) Mixed AG's

When an AG has at least one member who is authorized to receive benefits from the following programs, the AG is categorically eligible. Authorized to receive means the AG is coded in the data system as active for a benefit whether they are receiving it or not.

The TANF-funded programs and the time period for which an AG is categorically eligible are listed below.

WV Works: Any month for which benefits are received.

8) WV Income Maintenance Manual Section 11.5.A.3.a states in pertinent part:

A. FOOD STAMP BENEFITS

a. All Joint Owners Are In The AG

When all joint owners are in the AG, the total equity is counted, unless one of the joint owners is a WV Works or SSI recipient.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in that the Department is responsible for providing proper adverse action notification prior to taking negative action on a WV Works Cash Assistance or Food Stamp case. The Department clearly failed to provide proper written notice to the Claimant of WV Works Cash Assistance termination due to excessive assets; therefore the Claimant continues to be eligible for WV Works until proper notification is delivered.
- 2) Policy also dictates that in Food Stamp cases of jointly owned assets where all owners are included in the AG, if at least one individual is authorized to receive WV Works benefits the household is categorically eligible and the assets are excluded. Therefore, since the Department failed to properly terminate the WV Works Cash Assistance according to policy, the Claimant retains their categorical eligibility for Food Stamps during this period.

IX. DECISION:

It is the finding of the State Hearing Officer that the Department is **reversed** in the action to terminate the claimant's WV Works Cash Assistance and Food Stamps due to excessive assets. The Department must send proper notification before taking negative action.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of August 2007.

**Cheryl McKinney
State Hearing Officer**