



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

December 20, 2007

Dear Mr. & Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 7, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your request for support services for travel 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 support services (travel assistance) through the WV WORKS Program is based on current policy and regulations. Some of these regulations state that payment of support services is authorized to assist WV WORKS participants in securing or maintaining employment or participating in other activities. The type and amount of any payment made must be based on need, i.e., without receiving the payment in that amount the client is not able to participate in an activity. Available services must be discussed and needs assessed by the Case Worker and the client during the interview and assessment process and at reviews. The client may also request services as needs arise.

The information submitted at your hearing fails to demonstrate the need for support services payment for travel.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your request for support services payment of travel expenses 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
Mike Spurgeon, FSS, DHHR

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

_____ & _____ (Co-Claimant),

Claimant(s),

v.

Action Number: 07-BOR-2391

**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 December 19, 2007 for _____ and _____. 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 December 7, 2007 on a timely appeal, filed November 1, 2007.

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
Mike Spurgeon, 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 action to deny the Claimant's request for support services payment of travel expenses through the WV WORKS Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 24.14

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- Exhibit 1 WVIMM Chapter 24.14
- Exhibit 2 Notice letter to _____ dated 10/26/07
- Exhibit 3 Notice letter to _____ dated 10/30/07
- Exhibit 4 Time Sheets for _____ – September, October and November 2007
- Exhibit 5 Time Sheets for _____ – September, October and November 2007
- Exhibit 6 Yahoo driving directions from Claimant's home to _____ State University
- Exhibit 7 Financial Aid Budget for _____
- Exhibit 8 Award Package accepted by _____
- Exhibit 9 Award Package accepted by _____
- Exhibit 10 Fall Class Schedule for _____
- Exhibit 11 Fall Class Schedule for _____
- Exhibit 12 Estimate of transportation cost to and from _____
- Exhibit 13 Fairmont – _____ County Transit Authority _____ Schedule
- *Exhibit 14 Correspondence dated December 11, 2007 from _____ RN, MSN, Assistant Professor of Nursing at _____ State University – accompanied by a correspondence from Mike Spurgeon dated December 18, 2007.

* Indicates the evidence was received subsequent to the hearing.

VII. FINDINGS OF FACT:

- 1) On or about October 26 and October 30, 2007, the Claimants were notified that their request for support services payment related to travel expenses was denied. Exhibits 2 & 3 both note – “Based on our review, your request was denied because you are able to meet the requirements of your PRC without receipt of travel support payments.”

- 2) The Claimant is requesting that both she and her husband (Co-Claimant) be awarded support services travel payment at a rate of \$6 per day each for expenses associated with travel to and from [REDACTED]
- 3) The Department presented Exhibit 6 to show that the distance the Claimants must travel in order to attend classes at [REDACTED] is 1.2 miles each way (2.4 miles daily). While the distance the Claimants must travel daily renders them eligible for support payments through the WV WORKS Program (2 or more miles roundtrip), and travel for college attendance meets eligibility criteria as well, the Department noted that payment is based on need. Need, according to policy, requires the determination that the individual(s) would not otherwise be able to participate in the activity without the assistance of support services payment. The Department submitted a cost estimate of travel expenses (Exhibit 12) to show gasoline expenses incurred by the Claimants are minimal due to the short distance they must travel. It is noted, however, that travel costs include more than just the cost of fuel.
- 4) Exhibit 13 was submitted to show the Fairmont – [REDACTED] County Transit Authority, [REDACTED] [REDACTED] could be used by the Claimants to commute to and from the [REDACTED] college campus. The Department noted that [REDACTED] students can ride the bus for free with student identification and bus passes can also be obtained through the WV WORKS Program. The Co-Claimant's college classes are all on [REDACTED] campus (see Exhibits 5 & 11) and can be attended by using public transportation. Exhibits 6 & 12, reveal that the Claimant's schedule is different than the Co-Claimant's schedule and supports her claim that they (she and the Co-Claimant) cannot ride together daily.
- 5) Exhibit 7 is an estimated budget for costs incurred in the undergraduate programs offered by [REDACTED]. The Department cited Exhibits 8 & 9 (Financial Aid Award Packages for the Claimants) to show that the Claimants would have each had a surplus of money remaining. The Claimant acknowledged that she and her husband (Co-Claimant) did have around \$7,000 (combined) remaining after schooling expenses were paid but had to spend a large portion of that money on a vehicle for her husband.
- 6) The Claimant noted that WV WORKS policy excludes financial aid as income which should not be considered as a financial resource when determining need. The Department acknowledged that financial aid is not counted as unearned income or the Claimants would not have been financially eligible for any WV WORKS benefits. The Department noted, however, that support services payment requires the determination of need; including payment of WV WORKS cash assistance, public transportation, distance of travel and available resources.

- 7) The Claimant noted that she is in the Registered Nurse (RN) Program at [REDACTED] and this program not only requires her to travel greater distances to participate in clinical sessions, but it also rules out the opportunity to use public transportation. She testified that she has attended clinical sessions at [REDACTED], [REDACTED] as well as at [REDACTED]. She and the Co-Claimant have different schedules so they cannot ride together and she must also make sure that either she or her husband is there to get her child off the school bus. The Department Worker indicated he was unaware of additional travel expenses related to clinical sessions but would be willing to consider support services payment for travel that exceeds routine travel to and from the [REDACTED] campus. As a result, the record remained open for a period of 10 days (until December 17, 2007) to allow the Claimant to verify additional travel expenses. This information was received timely, was reviewed by the Worker and has been identified as Exhibit 14.
- 8) Exhibit 14, Correspondence from [REDACTED] RN, MSN, verifies that the Claimant has been required to attend clinical sessions at [REDACTED] every Tuesday and Thursday. The location of these clinical sites is not provided in Exhibit 14. According to the correspondence from the Department Worker (dated December 18, 2007) that accompanies the verification of clinical session attendance by the Claimant, Mr. [REDACTED] was contacted by phone and he reportedly indicated that each of the clinical sites are located within a mile of the [REDACTED] campus. Based on this information, the Department was unwilling to concede the need for support services payment for travel for the Claimant.
- 9) West Virginia Income Maintenance Manual (WVIMM), Chapter 24.14 states –
- Payment for support services is authorized to assist WV WORKS participants in securing or maintaining employment or participating in other activities.
- The type and amount of any payment made must be based on need, i.e., without receiving the payment in that amount the client is not able to participate in an activity. Available services must be discussed and needs assessed by the Case Worker and the client during the interview and assessment process and at reviews. The client may also request services as needs arise.
- 10) West Virginia Income Maintenance Manual (WVIMM), Chapter 24.14.C.8 (Transportation) states that those who use a private vehicle are reimbursed as follows: 2 - 20 miles/day \$6.00/day and verifies that costs related to educational/college travel meet the eligibility criteria.

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern the WV WORKS Program state that support services are authorized to assist WV WORKS participants in securing or maintaining employment or participating in other activities. The type and amount of any payment made must be based on need, i.e., without receiving the payment in that amount the client is not able to participate in an activity. An individual who uses a private vehicle can receive travel pay through support services in the amount of \$6 a day if it is determined that the need standard is met and travel exceeds 2 miles per day.

- 2) The WV WORKS Worker clearly has discretion in approving support services payment for travel once the individual(s) has/have been assessed for need. The role of the Hearing Officer in situations that allow Worker discretion is to determine if the decision is reasonable.
- 3) In this case, the Department has cited free alternative transportation for the Co-Claimant due to his regimented on-campus schedule and the availability of free public transportation during the period in which he attends classes. If the Co-Claimant elects to use his privately owned vehicle, he must drive 2.4 miles daily (.4 miles over the minimum travel requirement for eligibility). Based on the evidence, there is insufficient evidence to demonstrate need for support services travel payment for the Co-Claimant.
- 4) The evidence reveals that the Claimant cannot use public transportation or commute with her husband on a daily basis due to different class schedules and the requirement to attend clinical sessions. The Department indicated that travel beyond the Claimant's daily commute would be considered for travel support payments, however, the evidence fails to demonstrate any extraordinary travel expenses beyond the 2.4-mile daily commute. While it is clear that support payments for travel would be beneficial, the evidence fails to demonstrate that in the absence of support payments for travel the Claimant would be unable to continue in her activity. Accordingly, I find the Worker has exercised reasonable discretion in assessing need for both the Claimant and Co-Claimant.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, I am ruling to **uphold** the action of the Agency in denying the Claimants request for support services payment for travel 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 20th Day of December, 2007.

Thomas E. Arnett
State Hearing Officer