



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

March 16, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 15, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your request for Job Retention Bonus under the WV WORKS Program.

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 Program is based on current policy and regulations. Some of these regulations state as follows: an individual's gross family income must be 150% of the current FPL or less in order to receive support services through the WV Works Program (WV Income Maintenance Manual Section 24.16 C) and all requests for continued support service payments must be made on application form DFA-SS-2 (WV Income Maintenance Manual Section 24.16 A).

The information which was submitted at your hearing revealed that you were not required to complete the application form (DFA-SS-2) and were not notified in writing by form DFA-WVW-NL-3 of the denial of your request.

It is the decision of the State Hearings Officer to reverse the action of the Department to deny your request for Job Retention Bonus under the WV Works Program pending proper processing of an application and proper notification.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Shawn McMaster, Dept. Hearing Rep.

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

_____,
Claimant,

Action Number: 07-BOR-784

**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 March 15, 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 March 15, 2007 on a timely appeal, filed February 13, 2007.

It should be noted here that the claimant's benefits have been denied 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. Shawn McMaster, Family Support Supervisor.

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 deny the request for a Job Retention Bonus under the WV WORKS Program due to excessive monthly countable gross income.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Sections 24.14, 24.16.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- #1 Copy of hearing request.
- #2 Copy of form IG-BR-29.
- #3 Copy of WV Income Maintenance Manual Section 24.16 (3 pages).
- #4 Copy of e-mails sent through Groupwise 2-5-07.
- #5 Copy of e-mail sent through Groupwise 2-13-07.
- #6 Copy of WV Income Maintenance Manual Section 10, Appendix A.
- #7 Copy of AFDC Issuance Printout 3-13-07.

Claimants' Exhibits:

- # Cl-1 Copy of WV Income Maintenance Manual Section 24.14, #13.

(It should be noted that due to electrical problems, the Department Representative was unable to make a copy of the Claimant's Exhibit at the time of the hearing and it was agreed that she would fax a copy to the State Hearing Officer after the hearing was adjourned. The State Hearing Officer received the fax later that same day. Included with the fax was a copy of the Department's Hearing Summary which had not been provided during the hearing due to the electrical problems. However, since the State Hearing Officer did not know if the claimant was provided a copy of the Department's Hearing Summary and the parties did not stipulate during the hearing that the Department could send the Hearing Summary to the State Hearing Officer after the hearing was concluded, it cannot be admitted as evidence or used in the hearing decision and is being marked as "Not Admissible" for identification purposes only.)

VII. FINDINGS OF FACT:

- 1) The claimant requested a six-month Job Retention Bonus through the WV WORKS Program through a Supervisor on an unknown date and was informed that she was not eligible for the bonus due to excessive monthly income.
- 2) The claimant contacted the Department's Representative via Groupwise e-mail on 2-5-07 and was again informed that she was not eligible for the bonus due to excessive income and requested a hearing (Exhibit #4).
- 3) The Department's Representative purported that regulations in WV Income Maintenance Manual Section 24.16 C state that the gross family income must be 150% of FPL or less, that the FPL amount is \$1712 for a family of two(2), that the claimant's salary of \$19,392 along with her son's SSI and child support payments exceeded the \$1712 amount, that an application is required but no application was completed, that there was no written notification to the claimant of denial of her request, that the claimant came to the Department and asked for the bonus, that she last received benefits in August, 2006, and that the Job Retention Bonus is a \$500 amount and that it is a support payment through the WV WORKS Program..
- 4) The Claimant purported that she talked to the Coordinator, Maureen Rogers, about the bonus, that the bonus is not a support payment but is a bonus payment, that regulations in WV Income Maintenance Manual Section 24.14, #13 state that there is no minimum earnings level, that no application is required to request the incentive bonus, that she did not know she had to complete an application until she talked to the Department's Representative, that the policy says that residency must be maintained, that it is a one-time bonus for keeping your job, and that she does not agree with being denied..
- 5) WV Income Maintenance Manual Section 24.16 states, in part:

"Some individuals may continue to receive support services for 6 consecutive months following WV WORKS AG closure. Individuals are eligible for two 6 month continuation of services periods. Services may include case management; support service payments; continuation of and payment for activities such as, but not limited to, job search, job readiness and skill training. All support services available to active WV WORKS recipients are available to those who receive continued services.....

Although the client must actually request support services and apply for a support payment prior to the issuance of the payment, it is the Worker's responsibility to insure that the client is aware that he is eligible for continued services and inform the client of the services available.....

A. APPLICATION PROCESS, CONTINUED SUPPORT SERVICE PAYMENTS

All requests for continued support service payments must be made on application form DFA-SS-2. Multiple payments of the same type of support service require a DFS-SS-2 for each payment.....

1. Application Form, DFA-SS-2

Form DFA-SS-2 may be completed in a face-to-face interview, mailed, faxed, or left at the front desk to give to the worker.

Except for ongoing transportation needs, the Worker is required to talk to the client prior to acting on the DFA-SS-2 to confirm the identity of the person making the request and to discuss the need for the payment. Failure to be available at a pre-determined time for these confirmations does not result in application of a sanction; it results only in denial of the requested payment.

2. Client Notification

If any support service payment is issued to, or, on behalf of the client, the client is sent a notice at the end of the month that identifies all payments made to the client, or on behalf of the client.....

However, if payment is denied the client must be notified using form DFA-WVW-NL-3.

The Worker must provide a narrative explanation of the reason the payment is denied, in terms that are easily understood by the client.....

Under no circumstances is it correct to give or mail a DFA-WVW-NL-3 to a client without a narrative Worker-composed explanation of the reason for the denial.

The DFA-WVW-NL-3 offers the client the right to a Fair Hearing on the denial and must be mailed or given to the client with a Hearing request form.....

C. ELIGIBILITY REQUIREMENTS

Individuals who meet all of the following requirements may continue to receive support services within the time frame specified in Item A above.

- Gross family income is 150% or less of the current FPL; and
- The family resides in West Virginia; and
- One adult in the family meets all of the following requirements:
 - * Is employed; and
 - * Received a monthly WV WORKS check, not solely a DCA payment, either as a child or an adult; and
 - *Has his, or his spouse's dependent child in the home.

6) WV Income Maintenance Manual Section 24.14 C, 13 states, in part:

“Continued Support Services/Job Retention

\$500/Lifetime Limitation

Paid to each former recipient who is employed full-time during each month of the 6-months following AG closure. Payment is made at the end of the 6th month. The case must have been closed for the entire 6 months.

Full-time employment is defined as 100 hours/month or more.

Limited to a single one-time only support payment for paid employment. The amount of the payment must be equal to \$500.

The person employed is not required to be working for the same employer as when the AG was closed. Any full-time employment qualifies.

There is no minimum earnings level to qualify for the bonus.”

- 7) There are three (3) areas of dispute involved in this case.

First, the Department contends that there is a maximum monthly income limit equating to 150% of the FPL for a two person AG (\$1712) which the claimant’s monthly gross income exceeded. The claimant contended that there should be no maximum monthly income limit and that the regulations state that there is no minimum income level. The Department was correct in its contention that there is a maximum monthly income limit of \$1712 which would apply in the claimant’s case. The Department did not specifically show in the hearing that the claimant’s monthly gross income exceeded that income limit as the calculations were not provided as evidence or testimony during the hearing other than giving the yearly salary of the claimant, which was \$19,632 (\$1636 monthly). During the hearing, the Department did not provide the SSI amount of the claimant’s son. Therefore, the Department did not adequately show that the claimant’s gross monthly income exceeded the maximum income limit for continued support payments but did show that a maximum gross income limit is applicable. The claimant’s contention that there is no minimum income level is irrelevant as that regulation is simply stating that eligibility cannot be denied because the rate of pay is too small (minimum amount).

The second area of dispute was whether or not the Job Retention Bonus is a support service payment. The description and requirements of the Job Retention Bonus are listed under WV Income Maintenance Manual Section 24.14 which is titled “Payment for Support Services”. Clearly, the Job Retention Bonus is a support service payment.

The third area of dispute was whether or not an application is required when a client requests the Job Retention Bonus. WV Income Maintenance Manual 24.16 A clearly states that “all requests for continued support service payments must be made on application form DFS-SS-2”. That same section also requires that the claimant be notified in writing of any payments approved or denied. The Department failed to follow policy by issuing a verbal denial and by notifying the claimant by Groupwise email.

VIII. CONCLUSIONS OF LAW:

- 1) Regulations in WV Income Maintenance Manual Section 24.14 state that a Job Retention Bonus is a support service payment.
- 2) Regulations in WV Income Maintenance Manual Section 24.16 A state that all requests for continued support service payments must be made on application form DFA-SS-2. The Department did not follow proper procedures by requiring the claimant to complete an application for the Job Retention Bonus on form DFA-SS-2.
- 3) Regulations in WV Income Maintenance Manual Section 24.16 B state that if payment for continued support service payment is denied, the client must be notified using form DFA-WVW-NL-3 and that a narrative explanation of the reason for denial must be given in terms the client can understand. The claimant was notified verbally and by Groupwise email of denial of her request for the Job Retention Bonus and was not notified by form DFA-WVW-NL-3.
- 4) Regulations in WV Income Maintenance Manual Section 24.16 C state that in order to receive continued support services, the gross family income must be 150% or less of the current FPL. While it appears the claimant's gross monthly income may exceed the amount of \$1712 for two (2) persons, the Department did not specifically show during the hearing the total monthly amount of gross income calculated for the claimant. The amounts were provided by fax after the hearing was concluded but were not admissible as evidence as the hearing was left open only to allow the Department to fax a copy of the claimant's evidence (Exhibit #C1-1) due to electrical problems in the local office.

IX. DECISION:

It is the decision of the State Hearing Officer to reverse the action of the Department to deny the claimant's request for Job Retention Bonus through the WV WORKS Program. The Department must allow the claimant to complete an application form (DFA-SS-2) and must notify the claimant of the decision on that application via form DFA-WVW-NL-3. The claimant may request another hearing if the application is denied.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of March, 2007.

Thomas M. Smith
State Hearing Officer