

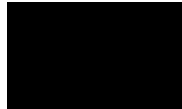


State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 15, 2008



Dear Ms [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 23, 2008. 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. Being engaged in a work activity becomes an eligibility requirement after the client has been a recipient of benefits for a total of 24 months, unless a determination of good cause is made. {West Virginia Income Maintenance Manual, Chapter 15.7}

The information submitted at your hearing reveals that you were eligible for a good cause determination at the time of your October 25, 2007 application and the evidence submitted establishes good cause.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in terminating/denying your application for benefits through the WV WORKS Program. Benefits shall be issued retroactively to the October 25, 2007 application date.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Rebecca Stephens, FSS, DHHR

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

Claimant,

v.

Action Number: 07-BOR-2519

**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 February 15, 2008 for [REDACTED]. 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 January 23, 2008 on a timely appeal, filed November 26, 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
Rebecca Stephens, 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 application for benefits through the WV WORKS Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 1.25, 13.10, 15.7 & 24.8

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- Exhibit-1 Notice of Decision dated 5/5/05
- Exhibit-2 WV Works Personal Responsibility Contract (PRC)
- Exhibit-3 Notice of Decision dated 11/13/07
- Exhibit-4 Hearing Request and Grievance Form Record
- Exhibit-5 WVIMM Chapter 15.7, 13.10, & 13.8
- Exhibit-6 Case Comments from 4/20/05 through 12/14/07
- *Exhibit-7 Medical information submitted for good cause accompanied by the Department's written decision dated February 8, 2008.

* Indicates the Exhibit was received subsequent to the hearing.

VII. FINDINGS OF FACT:

- 1) The Claimant completed an application for WV Works benefits on October 25, 2007 and a Personal Responsibility Contract, hereinafter PRC, was completed (Exhibit-2) on October 30, 2007.
- 2) The evidence indicates that the Claimant has received 29 months of WV Works benefits and that her WV Works case was closed in May 2005 as a result of the her failure to participate in a WV Works activity without good cause (as required when an individual has received 24 months of WV Works benefits). See Notice of Decision dated May 5, 2005 which is identified as Exhibit-1.

- 3) The Department cited WV Works policy that states an individual cannot receive her/her 25th month of WV Works benefits without participating in a WV Works activity. The Department contends that an individual can neither be exempt nor be granted good cause after his/her case has been closed for failure to meet the 24-month participation requirement. The Department contends that the individual must participate in a work activity an average of 5 hours per week as a condition of eligibility.
- 4) The Claimant, as noted in the PRC (Exhibit-2), was required to complete a minimum of 4 weeks of vocational training at SPOKES, complete 2 weeks of intense job search at SPOKES after completion of the vocational course, and participate fully to cure the 24-month case closure. The PRC, Page 4 of 4 (#8) notes – Complete minimum 30 hrs + weekly.
- 5) According to documentation found in Exhibit-6 (case comments), the Claimant failed to attend the required SPOKES class on November 5, 2007, and on November 7, 2007, the Claimant contacted her worker and indicated she was unable to attend the work requirement for medical reasons. If the issue is one of eligibility, verification of the impairment to establish good cause, per WVIMM, Chapter 4.2,E should be requested.
- 6) On or about November 13, 2007, the Claimant was notified that her October 25, 2007 application for WV Works was denied as the Claimant was neither involved nor exempt from participating in a WV Works activity. The Department noted specifically that in order for the Claimant to be approved for WV Works, after her case was close for not meeting the 24-month work requirement, the Claimant must be engaged in a WV Works activity to establish eligibility.
- 7) Testimony received at the hearing reveals that the Claimant has applied for Social Security Disability and was advised by her physician that placement in the SPOKES class was not appropriate. The Claimant purported that she informed her worker of the physician's determination.
- 8) The West Virginia Income Maintenance Manual (WVIMM), Chapter 15.7, states that the first day WV Works benefits are received, a parent or other caretaker relative included in the WV Works AG is subject to a work requirement, unless temporarily exempt.

Receipt of any WV Works benefits counts as a month including months in which the client is temporarily exempt from the work requirement. The 24-month period is the first 24 months of the 60-month lifetime limit. To continue to be eligible, the client is required to be engaged in work no later than the beginning of the 25th month of benefit receipt.

Being engaged in a work activity becomes an eligibility requirement after the client has been a recipient of benefits for a total of 24-months unless a determination of good cause is made. Reasons for which good cause can be established can be found in WVIMM, Chapter 13.10.

Work, for the purpose of meeting the 24-month limit, is defined as participation in one or more activities for a minimum of 5 hours per week (averaged). The worker must not place those participants who are only completing the minimum number of hours into time-limited activities, such as Job Readiness.

Good cause for not being placed in a vocational or job skill training is determined according to the criteria in chapter 13.10 of the WVIMM. Good cause must be reviewed monthly and documentation is required.

When the WV Works case is closed due to failure to meet the work requirement at the end of the 24-month limit, the parent or caretaker must actually be engaged in work, according to the above definition, prior to approval for the 25th month. See section 1.25, M to determine the beginning date of eligibility when the client reapplies after losing eligibility because the 24-month work requirement was not met.

9) WVIMM, Chapter 1.25, M - BEGINNING DATE OF ELIGIBILITY:

Once eligibility is established, i.e., the date all eligibility requirements are met, the application is approved. If the first benefits must be prorated, they are prorated from the date of application.

This policy goes on to state that there are other circumstances which affect the beginning date of eligibility.

When an assistance group becomes ineligible due to failure of a parent or caretaker, without good cause, to meet the 24-month work requirement, the beginning date of eligibility cannot be any earlier than the first day on which he participates in an activity which meets the 24-month work requirement.

- 10) Policy found in the WVIMM, Chapter 13.10, provides conditions under which good cause can be established for failure to participate in a WV Works activity. Among the reasons for granting good cause for temporarily not meeting participation requirements are (D) – An individual is experiencing a physical or mental health condition or he is suffering from a temporary debilitating injury for which a reasonable accommodation cannot be made. The individual's condition must be reevaluated within the time limits specified by his medical practitioner or at least quarterly. For any period of disability or incapacity that is expected to last longer than 6 months, the case must be submitted to MRT for evaluation. MRT must also approve all individuals claiming permanent and total disability.
- 11) West Virginia Income Maintenance Manual, Chapter 24.5 includes a list of WV Works Program work activities {Emphasis Added}. Among the listed activities is SPOKES.
- 12) Because the Claimant testified that she has a medical condition and her physician advised her that placement in the SPOKES program was not appropriate, an ORDER REMANDING ELIGIBILITY REVIEW was entered by the State Hearing Officer on January 29, 2008 directing the Claimant to obtain medical documentation of her condition and the Department to evaluate for good cause. The Department reviewed the Claimant's medical information and completed a written decision which has been identified as Exhibit-7.

13) Exhibit-7 is accompanied by two documents from [REDACTED], MD. The first document is a note dated October 23, 2007 that includes the Claimant's diagnosis of Bipolar Disorder, mixed, severe and concludes with the statement – "In my opinion she is unable to engage in any work activity due to the severity of her illness." The second document dated February 6, 2008 indicates that the Claimant is under Dr. [REDACTED] care and provides a list of medications.

14) WVIMM, Chapter 24.4, A, outlines the worker's responsibilities for case management. The responsibility at the third bullet reads:

Establishes for the client only reasonable and appropriate requirements related to the client's capability to perform the tasks on a regular basis, including physical capacity, psychological fitness, maturity, skills, experience, family responsibilities and place of residence. In addition, reasonable and appropriate requirements take into account the client's proficiency and child care and other support services needs.

15) The Department's review of the medical documentation in Exhibit-7 includes the following pertinent statements:

"The Department does not feel that this documentation provides adequate good cause for not participating in a WV Works work requirement. All participants receiving WV Works must participate in a work activity after receiving 24 months of assistance. A doctor's statement does not automatically exempt a client from participation. Ms. [REDACTED] has received 29 months of TANF assistance. Under the Americans with Disabilities Act, the Department must provide reasonable accommodations to clients with limitations so that they may receive the full benefits of the WV Works program. Ms. [REDACTED] was sent to an activity that accommodated her limitations. The SPOKES class is a sedentary activity with constant supervision. If Ms. [REDACTED] became drowsy or dizzy due to her medications, an instructor would be there to make sure that she would be able to sit or lay down until the feelings passed."

It should be noted that additional side effects are listed on the prescription medication brochures reviewed by the Department which include – Weakness, tiredness, drowsiness, dizziness, confusion, difficulty concentrating, tingling of the hands/feet, loss of appetite, diarrhea, etc... This does not include any symptoms related to the Claimant diagnosis that may persist despite medication therapy.

VIII. CONCLUSIONS OF LAW:

- 1) The Department's contention is that the Claimant's case was closed based on the 24-month work requirement, and therefore, as a condition of eligibility, the Claimant had to actually be participating in a work activity a minimum of 5 hours per week before benefits could be approved. While policy is clear that an individual who has received 24 months of WV Works benefits cannot qualify for an "exemption," the good cause provision is always available. The 24-month participation policy starts with the statement – "the individual must be involved in a work activity or establish good cause for not being engaged in a work activity before the 25th month of benefits can be received." The issue of good cause is again addressed in Chapter 1.25, M when it discusses the beginning date of eligibility following case closure due to the 24-month work activity policy. Policy requiring participation before eligibility can be established (when the case was closed for failure to participate) does not exclude good cause, but rather presumes good cause cannot be established. It is unreasonable and contrary to policy to exclude an applicant from good cause consideration when that individual develops a disabling condition subsequent to the 24-month closure. For this reason, the Department was directed to review the Claimant's case to determine whether good cause could be established.
- 2) If eligibility is the issue at the time of application, and verification of participation in a work activity OR good cause is required, an ES-6 (Verification Request Form) should have been issued and a PRC should have been completed subsequent to verification (either participation or good cause) being provided.
- 3) With regard to the documentation submitted to establish good cause, the Claimant's physician states that the Claimant is unable to engage in any work activity (note that SPOKES is a work activity according to WVIMM 24.5) due to the severity of her illness. The Department noted that accommodations were made for the Claimant as SPOKES placement is a sedentary activity and the SPOKES instructor would be there to make sure she would be able to sit or lay down until drowsy or dizzy feelings passed.
- 4) The Claimant's medical condition is not a physical impairment, and therefore, sedentary placement becomes irrelevant. Reasonable accommodations, according to the Department, presume that the SPOKES instructors, whose mental health qualifications are unknown, will administer medical care or provide medical advice when the Claimant is feeling ill. The symptoms of the Claimant's medical condition cited by the Department (drowsiness & dizziness) are side effects of the prescription medications and also include nausea, vomiting, confusion, difficulty concentrating, tingling of the hand/feet, loss of appetite, diarrhea etc... This does not include clarification of any medical symptoms that may persist despite medication therapy. Moreover, the Claimant's treating physician specifically stated that the Claimant is unable to engage in any work activity. Based on the evidence, these accommodations are neither reasonable nor appropriate.

- 5) The Claimant, in conjunction with her October 25, 2007 application for WV Works, has established good cause for failure to participate in a work activity. The Claimant's benefits shall be approved retroactive to the date of application as the physician's statement establishing good cause is dated two days prior to the application. The Claimant's continued WV Works eligibility and good cause status should be reviewed in accordance with existing WV Works policy requirements.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the decision of the State Hearing Officer to **reverse** the action of the Agency in denying the Claimant's application for benefits through the WV Works Program. Benefits shall be issued retroactively to the October 25, 2007 application date.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th Day of February, 2008.

**Thomas E. Arnett
State Hearing Officer**