



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

February 8, 2008

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 16, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to deny your application for Cash Assistance due to excessive assets.

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 Cash Assistance, WV Works, is based on current policy and regulations. Some of these regulations state as follows: A client may not have access to some assets. To be considered an asset, the item must be owned by or available to the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset. (WV Income Maintenance Manual §11.2 D.)

The information, which was submitted at your hearing, revealed that you do not have physical or legal accessibility to dispose of property jointly owned by you and your X-husband. This property should not have been considered an asset available to meet your financial needs.

It is the decision of the State Hearing Officer to reverse the action of the Department to deny your application due to excessive assets.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Sue Radko, DHHR

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

Claimant,

v.

Action Number: 08-BOR-407

**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 January 16, 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 16, 2008 on a timely appeal, filed December 12, 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's Witnesses:

██████████ claimant
██████████ claimant's sister

Department's Witnesses:

Sue Radko, Family Support Supervisor

Presiding at the Hearing was Sharon K. Yoho, 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 Agency was correct in their actions to deny WV Works, cash assistance based on excessive assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy § 11.1, 11.2, 11.3, 11.4 and 11.5

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV Income Maintenance Manual Policy §11.2,11.3,11.4 and 11.5
- D-2 Notice of denial dated December 3, 2007
- D-3 Letter advising unable to reverse the decision, dated January 14, 2008
- D-4 Application dated November 30, 2007

Claimant's Exhibits:

- C-1 Copy of Deed, provided subsequent to the hearing date

VII. FINDINGS OF FACT:

- 1) The claimant is an SSI recipient living with her dependent children. She had been a resident of ██████████ County and an active recipient for WV Works. She was previously residing in a home that was inherited by her x-husband from his father. The deed (Exhibit C-1) was later amended to include the claimant as a co-owner of the home. The wording on the deed is not (him or her) but rather (him and her).

- 2) The claimant's x-Husband is in prison for sexually molesting the claimant's 15-year-old daughter, who is now 20-years-old and still residing with the claimant. While the claimant was away for a week, taking care of her mother, an x-brother-in-law moved into the house, changed the locks and forbid her to reenter. She testified that the brother-in-law told her that his brother who is in prison told him to move into the house. The brother-in-law would not let the claimant in to retrieve her possessions until she signed a statement saying he could live there until his brother got out of prison. The claimant was forced to sign the statement. She got her possessions and moved to ██████████ County.
- 3) The claimant's WV Works benefits had lapsed during this time and she reapplied for the benefits in the ██████████ County DHHR office on November 30, 2007. When the worker asked her about property owned, she did advise the worker that she was part owner of the home in ██████████ County. She explained the circumstances of being locked out and no longer having access to the property.
- 4) Since the claimant was not residing in the home, the Department had to assess it as non-homestead property and consider it when calculating assets. The equity in the property is \$12,000. therefore, the Department considered \$6,000. as an asset available to the claimant. Her application for Cash Assistance was denied due to excessive assets. A notification of this denial was mailed to the claimant on December 3, 2007 and her hearing was requested December 12, 2007.
- 5) The claimant testified that she desired to remain living at the home, but that she was forced out. She says that the brother-in-law has since been making much improvements to the property. She indicates that she believes that her x-husband was involved in his brother forcing her out of the home. For this reason, she also believes that her x-husband would not agree to sell the property. The Department indicates that the grievant would need to approach the x-husband and see if he would sign a statement saying that he would not agree to sell the home. The claimant is hesitant to approach the x-husband regarding the issue. The claimant states that their divorce proceedings did not address this piece of property.

6) **WV Income Maintenance Manual § 11.1, Definitions:**

ASSETS: Total real and personal property the client has available to meet financial needs, including the value of assets assigned from certain individuals. Assets may be liquid or non-liquid.

Accessibility of Assets: A client may not have access to certain assets. In order to be considered an asset, the asset must be owned by or available to the client. If the client cannot legally dispose of the asset, it is not treated as an asset.

7) **WV Income Maintenance Manual § 11.2:**

Accessibility of Assets: A client may not have access to some assets. To be considered an asset, the item must be owned by or available to the client and available for disposition. If the client cannot legally dispose of the item, it is not his assets.

Examples of inaccessibility include but are not limited to, the following:

-Legal proceedings such as, probate, liens, items encumbered, or otherwise unavailable, due to litigation are not considered assets until the court proceedings are completed and a court decision is reached. The agency is required to follow the dictates of the court order.

-Irrevocable agreements: For WVWORKS and Medicaid, transfers to an irrevocable agreement or trust may result in a penalty.

-Joint ownership and the meaning of such ownership may be indicated in one of the following ways:

- AND – Joint ownership indicated by “and” between the names of the owners. Unless there is evidence to the contrary, each owner is assumed to own an equal, fractional share of the jointly owned asset. If the fractional share of the asset is not available to either owner without the consent of the other, and such consent is withheld, the asset is excluded as being inaccessible.
- OR – Joint ownership indicated by “or” between the names of the owners. The asset is available to each owner in its entirety.
- AND/OR – Joint ownership indicated by “and/or” between the names of the owners. The asset is available to each owner in its entirety.

8) **WV Income Maintenance Manual § 11.3:**

To be eligible for programs administered by the Office of Family Support (OFS), the total amount of countable assets cannot exceed the amounts, which are listed in the following chart:

WV WORKS - \$2,000 regardless of the number in the AG

9) **WV Income Maintenance Manual § 11.4:**

3. Non-Homestead Property – Treatment of non-homestead property as an asset depends on its use.

10) **WV Income Maintenance Manual § 11.5:**

c. WV WORKS

The assets of disqualified individuals, those excluded by law, and excluded SSI recipients age 18 or over, who would otherwise be required to be included in the AG, are counted as if they were members of the AG.

b. WV WORKS

Treatment of jointly owned assets becomes significant when all the joint owners are not included in the AG.

(2) All Joint Owners Not in the AG

If all joint owners are not in the AG, the following general rules apply:

The assets considered available to the AG from other joint ownership is the countable asset value assigned to the AG as a result of the joint ownership, plus any other assets owned solely by AG members.

VIII. CONCLUSIONS OF LAW:

- 1) The definition of Assets provided in policy §11.1 provides that an asset is property the client has **available** (emphasis added) to meet financial needs. The property in question had previously been available to this claimant to meet the financial need of housing. She expected the property to continue to be available to her but the brother-in-law by instruction from the co-owner had made the property unavailable to her.
- 2) The definition of Accessibility of Assets provided in policy §11.1 stipulates that if the client cannot legally dispose of the asset, it is not treated as an asset. The property in question is not this claimant's asset; it is the asset of her and her x-husband. She cannot legally dispose of the item. They together could legally dispose of the item if both agreed.
- 3) Policy §11.2 lists examples of inaccessibility and clearly notes that inaccessibility is **not limited to** (emphasis added), the examples provided. This policy goes on to include an example of joint ownership with the use of AND. It states that if the fractional share of the asset is not available to either owner without the consent of the other, and such consent is withheld, the asset is excluded as being inaccessible. The action of the brother-in-law to take over physical possession of the home upon the instruction of the co-owner clearly makes this property inaccessible to this claimant. This policy does not stipulate that the other owner has to refuse in writing to sell and therefore it would not be necessary for the claimant to confront the man who sexually molested her daughter to get such a written statement.
- 4) The property in question was an inherited family home and it is reasonable to believe that the two brothers might jointly create a plan to make the property inaccessible to the x-wife or x-sister-in-law. The changing of the locks accomplished this goal. The repairs that the brother is making to the home further supports that the x-husband has given the brother the go ahead to make it his home at least for now.
- 5) One of the stated purposes of the WV Works program is to provide assistance to needy families with children so they can be cared for in their own home. This family is in even greater need because of their home being made unavailable to them.

IX. DECISION:

It is the decision of this Hearing Officer that the jointly owned property is not available to this claimant to meet financial needs. It is inaccessible to the claimant for disposal. It is the ruling of this Hearing Officer that the Claimant did not have excessive countable assets at the time of her November 30, 2007 application for WV WORKS. I **reverse** the Agency in their actions to deny cash benefits due to assets.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of February, 2008.

**Sharon K. Yoho
State Hearing Officer**