



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

March 24, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 26, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny your request for WV WORKS benefits beyond the 60-month lifetime limit.

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 and benefit levels for WV WORKS/TANF are determined based on current regulations. One of these regulations specifies that there is a lifetime limit of 60 months that a family can receive assistance under TANF or WV WORKS. An extension of benefits can be requested and forwarded to the OFS Extension Committee during the final five months of eligibility based on any one of seven specified circumstances - one of which is if a recipient is disabled. Disabled means that an individual is unable to engage in gainful employment, as determined by a medically qualified professional. If there are two parents in the household, both must be disabled/incapacitated to qualify for consideration. If an extension is denied, the Worker must send notice of the decision, along with a Fair Hearing Request form to the client. The client may request a Fair Hearing, but benefits must not be continued pending the Fair Hearing decision. (WV Income Maintenance Manual Section 15.6)

The information submitted at your hearing reveals that the Department failed to submit current medical records to the Medical Review Team (MRT) for a disability evaluation and that you failed to provide the general physical form requested. As a result, there is insufficient information to approve or deny your request for an extension based on a disability. This matter is therefore remanded to the Department for further evaluation. Please see Section VIII (Conclusions of Law) for specific instructions.

It is the decision of the State Hearing Officer to **remand** this matter to the Department for further evaluation of your request for an extension of benefits beyond the 60-month lifetime limit 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
Lisa Gongola, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR-698

**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 24, 2009 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 February 26, 2009 on a timely appeal, filed January 12, 2009.

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
-----, Claimant's spouse
Lisa Gongola, FSS, DHHR
Kim Cox, 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 Agency was correct in its decision to deny the Claimant's request for an extension of WV WORKS benefits beyond the sixty (60) month lifetime limit.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 1.2 & 15.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 E-mail correspondence from Monica Hamilton to Lisa Gongola - dated 10/23/08
- D-2 Notice of extension committee approval for a one month extension – dated 10/28/08
- D-3 Notice of Decision - dated 12/2/08
- D-4 Medical records received by the Department on 10/21/08 – 26 pages
- D-5 Transmission Verification Report – Confirmation medical records were faxed to Extension Committee
- D-6 WV Income Maintenance Manual, Chapter 15.6
- D-7 Fax cover letter from [REDACTED] Health Center and medical findings received January 13, 2009
- D-8 E-mail correspondence from ----- to Kim Cox - dated 1/13/09.

VII. FINDINGS OF FACT:

- 1) The Claimant and her spouse were active recipients of WV Works benefits and appeared at the [REDACTED] County Department of Health and Human Resources, hereinafter Department, on September 4, 2008 to pursue an extension of WV Works benefits beyond the 60-month lifetime limit. The Claimant's 60th month was determined to be October 2008. As a matter of record, the Claimant, through the Department's Medical Review Team (MRT), had already been determined disabled. However, in order for a two parent household to be approved for an extension based on disability, both parents must be found disabled.

- 2) The Department contends that during a September 2008 meeting, the Claimant's spouse was provided a general physical form he was to have completed by his physician (Dr. [REDACTED]). In addition, an ES-RT-8 and an ES-RT-8a medical form was sent directly to Dr. [REDACTED] with a request for the physician to complete and return. The Department's representatives purported the Claimant was advised to return the requested general physical as soon as possible. The Department's representatives stated that they had not received any medical information on the Claimant's spouse until a fax was received on October 21, 2008 (Exhibit D-4). Because the Extension Committee was scheduled to meet on October 23, 2008, the medical information included in Exhibit D-4 was faxed to its attention the same day.
- 3) Exhibit D-1, E-mail correspondence dated 10/23/08, indicates that the extension request for the Claimant was approved for a 1 month period. This document provides instructions to the Department's WV Works Worker (from Monica Hamilton, Extension Committee member) and states – "We would also like to know if he went for the general physical and we just could not get a copy? We also need to know if it is the clients fault or the doctors fault that we cannot get the information needed?"
- 4) The Department notified the Claimant of the 1-month extension approval in correspondence dated October 28, 2008 (Exhibit D-2). This notice states:

The extension committee has approved you for a one month extension at this time.
You will receive your November WV Works check and your case will then close.
If you have any questions please feel free to phone me at the above number.
- 5) The Department acknowledged the Claimant was not provided anything in writing indicating that additional information was required but stated she was verbally advised on at least three different occasions.
- 6) On December 2, 2008, the Claimant was notified via a Notice of Denial (Exhibit D-3) that her October 28, 2008 application for WV Works was denied. It is unclear why October 28, 2008 was noted as the application date but this notice indicates – "Received benefits for 60 months which is the maximum allowable period of time." The Department also acknowledged that the Claimant received WV Works cash assistance for December 2008 despite only being approved for November 2008 as the Claimant could not be notified timely.
- 7) The Claimant purported that she was advised by the physician's office that the requested information was faxed to the Department on several occasions. She indicated that the physician's office became frustrated because she called so often.
- 8) The Department reported that it received additional medical information on January 13, 2009 (Exhibit D-7), but indicated the general physical form requested from Dr. [REDACTED] was not included. Extension Committee member ----- was contacted by the Department to inquire about a reconsideration of the Claimant's extension request. In Exhibit D-8, Mr. DeMary states – "No, the extension was closed after an initial 1 mo. approval and a re-consideration cannot be requested after the 60th month."

9) It should be noted that there two current documented medical reports by Dr. [REDACTED] included in Exhibit D-4 resulting from visits by ----- on June 27, 2008 and September 11, 2008. This information, however, has not been reviewed by the MRT.

10) WV Income Maintenance Manual, Chapter 15.6.A states -
There is a lifetime limit of 60 months that a family may receive cash assistance under TANF and/or WV WORKS. The presence of even one AG member who has received TANF and/or WV WORKS as an adult or an emancipated minor renders the entire AG ineligible. Children who continue to reside with an adult or emancipated minor who received TANF and/or WV WORKS for 60 months are not eligible. The amount of the payment received has no bearing on the time limit, so that a payment of \$1 counts as one month toward the 60-month limit.

11) WV Income Maintenance Manual, Chapter 15.6.C states, in pertinent part:

There are provisions which may allow a family to receive benefits for more than 60 months.

Once an extension is approved, the client must continue to meet the criteria on which the extension was based each month of the extension period. In addition, the individual must be actively engaged in an activity or process designed to further the AG's goal of self-sufficiency, such as pursuing other resources. The Worker may close the case at any time during the extension period when the client fails to follow through on requirements established for receipt of the additional months of WV WORKS. The Worker must continue to monitor the case each month to determine if the client continues to meet the extension criteria identified at the time of the Committee's extension approval. Once the case is closed and the extension ends for failing to meet these requirements, the household is no longer eligible for the extension. The Worker must document the closure and notify the Family Support Policy Unit.

A temporary extension of up to 6 months may be given only once for the adults and emancipated minors in the AG at the time the extension is approved, unless the extension is based wholly or in part on domestic violence.

Once an AG is closed due to receipt of TANF benefits for 60 months, every application that includes an individual who received benefits as an adult or emancipated minor for 60 months is denied. No extensions are approved after AG closure for this reason.

A single parent household in which the parent meets one of the following criteria is eligible to be considered for an extension of the 60-month time limit. For a 2-parent household, both parents must meet one of the following criteria for the AG to be eligible. Among the criteria listed in this section of policy is an extension based on disability. (See WVIMM, Chapter 15.6.C.4)

12) WV Income Maintenance Manual, Chapter 15.6.C.4 states, in pertinent part:

Disabled is defined as unable to engage in gainful employment, as determined by a medically qualified professional.

Because WV WORKS clients must be referred to MRT if unable to participate for longer than a 6 month period it is assumed that an individual who states he is disabled will already have medically established his disability by the 55th month of TANF/WV WORKS receipt. If not, he must apply for SSI and be referred to MRT prior to approval of an extension. The Worker must complete the MRT application and evaluation as soon as possible before reaching the 60th month. An SSI denial based on failure to establish a disability does not automatically preclude an extension on this basis if MRT finds the individual to be disabled. However, the individual must be actively appealing his SSI denial to qualify for an extension. If the individual has been found to be disabled by MRT and his re-evaluation is due before his 60th month of benefit receipt, his case must be submitted for a re-evaluation by MRT. WV WORKS participants who have a documented disability must be placed in the AD component in Work Programs in addition to other component codes.

If it is determined that the individual is not disabled, or is able to engage in gainful employment with no limitations, he does not qualify for an extension.

If it is determined that the individual is able to engage in gainful employment with some limitations, he may qualify for an extension of up to 6 months to locate suitable employment and must be referred to the Division of Rehabilitation Services for a vocational evaluation and assessment.

If MRT has determined, before or during the 60th month of benefits, that the individual will be temporarily unable to engage in gainful employment for a period of time extending beyond the 60th month of eligibility, he may qualify for an extension of up to 6 months. The number of months granted will depend on the length of time that MRT has determined him to be unable to engage in a gainful activity. The local office will be responsible for monitoring the status of the client on a monthly basis.

If an MRT re-evaluation is due during the extension period and the decision again finds the individual unable to participate, the extension will continue up to 6 months. In this situation, if the extension is continued longer than initially approved by the committee, the Worker must detail the reason for extending the months in case comments, notify the 60-Month Extension Committee for approval, and adjust the appropriate number of months to ANLM, not to exceed 6. During the extension period, the Worker must monitor the case to make sure the client continues to meet all other eligibility requirements.

- 13) WV Income Maintenance Manual, Chapter 4.1, A & B provides Client and Worker responsibilities regarding verification requirements and states:

The primary responsibility for providing verification rests with the client. Failure of the client to provide necessary information or to sign authorizations for release of information, results in denial of the application or closure of the active case, provided the client has access to such information and is physically and mentally able to provide it.

At application, redetermination and anytime a DFA-6 is used, the Worker must list all required verification known at the time. The client must not be required to verify a few items at a time, unless information received after the RAPIDS verification notice or DFA-6 is issued calls for additional verification.

If the client is unsuccessful in obtaining information, or, if physical or mental limitations prevent his compliance, and there is no one to assist him, the Worker must obtain the verification.

- 14) Policy found in the WV Income Maintenance Manual, Chapter 1.2.E, provides that it is the client's responsibility to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. When the client is not able to provide the required verification, the Worker must assist him. The client must be instructed that his failure to fulfill his obligation may result in – denial and / or closure.

VIII. CONCLUSIONS OF LAW:

- 1) The role of Hearing Officer in cases such as these is to ensure the Department has correctly followed policy and procedure. In order for an individual to qualify for a WV Works extension (beyond the 60-month lifetime limit) based on a disability, policy specifies that the individual must be referred to MRT for a disability determination
- 2) The evidence identified as Exhibit D-4 includes several medical records for the Claimant's spouse, including documented medical findings as recent as June and September 2008. While the Department specifically requested that a general physical be completed on the Claimant's spouse, the medical records received should have been forwarded to the MRT so that a disability determination could be completed.
- 3) Whereas the Department (WV Works Worker and the Extension Committee) did not submit the medical records to the MRT, this case will be remanded so to complete this step of the extension request. The Claimant will provide to the Department, within 14 days from the date of this decision, any and all medical information (including the completed general physical form) that can be obtained to support -----'s disability. Upon expiration of the 14th day, the Department will forward the medical information included in Exhibit D-4, Exhibit D-7, and any medical information received timely (on or before the 14th day) to the MRT for a disability evaluation. If the Claimant's spouse is found to be disabled, and all other eligibility requirements are met, the Claimant is eligible for an extension up to four (4) additional months (January, February, March & April 2009). If the decision is not in the Claimant's favor, the Claimant can file an appeal to contest the unfavorable finding.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, I am ruling that this matter be **remanded** to the Department.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of March, 2009.

**Thomas E. Arnett
State Hearing Officer**