



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W. Washington Street
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 26, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 5, 2009. Your hearing request was based on the Department of Health and Human Resources' denial of a support payment 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: Payment for support services is authorized to assist WV WORKS participants in securing or maintaining employment or participating in other activities. (West Virginia Income Maintenance Manual, Chapter 24.14)

The information submitted at your hearing revealed that you did not comply with the participation requirements necessary to warrant issuance of support services.

It is the decision of the State Hearings Officer to **uphold** the action of the Department to deny support services under the WV Works program.

Sincerely,

Jennifer Butcher
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Debra Cottrill, Family Support Specialist

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

-----,

Claimant,

v.

Action Number: 08-BOR-2704

**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 26, 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 5, 2009 on a timely appeal, filed January 5, 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 witness

Debra Cottrill, Family Support Specialist

Presiding at the Hearing was Jennifer Butcher, State Hearing Officer and a member of the State Board of Review.

All persons offering testimony were placed under oath.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct to deny a support service payment under the WV Works program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 24.14.A

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV Works – Personal Responsibility Contract (PRC) dated December 1, 2008
- D-2 Department Authorization (BA-67) form dated December 22, 2008
- D-3 Multi Disciplinary Team Meeting Report dated December 30, 2008
- D-4 Hearing Packet
- D-5 Participant Time Sheet for the month of December 2008
- D-6 Support Service Payment denial notification dated December 31, 2008
- D-7 West Virginia Income Maintenance Manual, Chapter 13.7
- D-8 West Virginia Income Maintenance Manual, Chapter 24.14
- D-9 West Virginia Income Maintenance Manual, Chapter 13.10
- D-10 West Virginia Income Maintenance Manual, Chapter 24.3

VII. FINDINGS OF FACT:

- 1) On or about December 31, 2008, the Department notified (Exhibit D-6) the Claimant that her request for a support service payment under the WV Works program had been denied. The notice stated, in pertinent part::

Based on our review, your request was denied because you have failed to attend an assigned activity [*sic*] your 20 hrs [*sic*] per week requirement as per your PRC.

- 2) Testimony from the Department worker confirmed that the Claimant attended an orientation for the WV Works program, which was intended to explain the procedures for receiving a WV Works check and support services payments. The Department also presented the Personal Responsibility Contract (Exhibit D-1), or PRC, signed by the

Claimant on December 1, 2008. The PRC listed specific activities required of the Claimant in order to receive WV Works benefits. Among other requirements, this list includes “Attend Workforce 78 hrs [sic] per month CS.” The “CS” code is listed in a policy citation (Exhibit D-8) from the Department as the WV Works activity of Community Service Programs.

- 3) The Claimant made a request for a support services payment for clothing, and the Department worker submitted a Department Authorization form (Exhibit D-2) for approval from her supervisor, on or about December 22, 2008.
- 4) A Multi Disciplinary Team meeting was held on December 30, 2008 between the Claimant and the Department. In this meeting, the Claimant’s drop in participation hours below the minimum required for WV Works was discussed. This drop was further documented by the Participant Time Sheet (Exhibit D-5) submitted to the Department on January 5, 2009. Both the PRC (Exhibit D-1) and a policy citation by the Department (Exhibit D-10) show that the minimum hours of participation required of the Claimant was seventy-eight (78). Exhibit D-5 shows forty (40) hours of actual attendance for the month of December, sixteen (16) hours of excused absences allowed by the Department, and seven (7) hours for a holiday, resulting in a total of sixty-three (63) hours of participation from the Claimant in the month of December 2008.
- 5) The West Virginia Income Maintenance Manual, Chapter 24.14.A, states, in pertinent part:

24.14 PAYMENT FOR SUPPORT SERVICES

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.

Support services may be issued during any month for which a WV WORKS payment is made. In addition, some former Work-Eligible Individuals in a previous WV WORKS case continue to be eligible for support service payments as long as the conditions in Section 24.16 are met. This Section contains information about support services available to active AG members and non-recipient Work-Eligible Individuals in the household.

NOTE: Although non-recipient Work-Eligible Individuals are not in the AG, they are eligible to receive support services and payments as long as they meet all other eligibility requirements.

A. WHO IS ELIGIBLE

Those who meet all of the following criteria are eligible for payment of support services:

- Work-Eligible Individual in an active WV WORKS case for the month for which the support service payment is intended.

- A non-recipient parent, step-parent, or caretaker relative receiving SSI who has chosen to volunteer to participate in a work activity.

- **Participating, or preparing to participate, in a work activity** listed in Sections 24.6 – 24.13.

- Not in a 3rd or subsequent sanction for the month for which the support service payment is intended. Those who are in a 1st or 2nd sanction period are eligible for support services. There is no corresponding reduction in the amount of the support service payment due to either the 1st or 2nd sanction.

- Has not received and is not expected to receive, a DCA payment which covers the month for which the support service is requested. (emphasis added)

6) The Claimant testified that she had personal problems arise, which limited her ability to participate in the required WV Works activity. She explained that these problems were exacerbated by her dependence on public transportation. The Claimant insisted that she felt that she had met the requirements of WV Works, and should have received the support service payment for clothing.

7) The West Virginia Income Maintenance Manual, Chapter 24.3.B.2, states, in pertinent part:

2. Individual Absences

This policy establishes the guidelines for the treatment of hours missed in participation under WV WORKS. All missed time whether excused or unexcused, must be made up within the month in which it is missed. When it is impossible to make up time missed, the Worker must decide if the absence is excused or unexcused.

Excused absences of **up to 16 hours/month**, not to exceed a maximum of 80 hours in the 12-month period, including the current and the preceding 11 months, may be counted as hours worked in that month.

The hours worked include the excused hours when participation did not actually occur. An excused absence includes illness or other good cause which prevented participation. It is the responsibility of the Worker to determine if the absence is excused or unexcused based on contact with the employer/contractor and client documentation. A determination of good cause may only be made by the WV WORKS staff.

Excused absences must not be used toward calculating the monthly participation hours, unless the Worker has determined that the absences meet the definition of what may be excused and the participant was scheduled to work that day. The Worker must document in case comments why the absences are being excused and how the reason for the absence was verified. (emphasis added)

VIII. CONCLUSIONS OF LAW:

- 1) Policy for the WV Works program stresses that both the intent of support service payments - and a requirement for those payments - is participation in employment or other activities. The Claimant's PRC outlined her required activity, and was signed by the Claimant.
- 2) In the month the Claimant requested a support service payment for clothing, she failed to meet the minimum participation requirement of the program. The Claimant identified personal problems as the cause of her failure to meet participation hours; however, the Department awarded the maximum number of hours allowable by policy for excused absences, and the Claimant still did not meet the minimum.
- 3) Without the policy requirement for participation hours from the Claimant met, the Department was correct to deny a support service payment.

IX. DECISION:

It is the decision of the State Hearings Officer to **uphold** the action of the Department to deny the Claimant a support service payment for clothing under 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 _____ Day of March, 2009.

**Jennifer Butcher
State Hearing Officer**