



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 1, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 12, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your Food Stamp and West Virginia Works benefits due to excessive assets.

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 Food Stamp Program is based on current policy and regulations. Some of these regulations state as follows: Maximum allowable assets for the Food Stamp Program are \$2,000, or \$3,000 when at least one Assistance Group member is 60 or older or disabled. The asset limit for West Virginia Works is \$2,000 regardless of the number in the Assistance Group. 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. (West Virginia Income Maintenance Manual Sections 11.2 and 11.3)

Information submitted at your hearing revealed that your son is the owner of property in [REDACTED] however the property is unavailable for disposition as both parents must agree to sell it under [REDACTED] law.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to deny your Food Stamp and West Virginia Works benefits.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
E.J. Ulland, FSS, DHHR

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

_____,

Claimant,

v.

Action Number: 06-BOR-2626, 06-BOR-2627

**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 November 1, 2006 for _____. The 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 October 12, 2006 on a timely appeal filed August 9, 2006.

II. PROGRAM PURPOSE:

The Food Stamp Program is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The purpose of the Food Stamp Program is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

West Virginia 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 mother

Lisa Webb, Family Support Specialist, DHHR

E.J. Ulland, Family Support Specialist, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 Claimant's Food Stamps and West Virginia Works benefits due to excessive assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 11.1, 11.2, 11.3 and 11.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Copy of case comments

D-2 West Virginia Income Maintenance Manual Sections 11.1, 11.2, 11.3 and 11.6

D-3 Hearing summary

Claimant's Exhibits

C-1 Letter from _____ dated October 5, 2006

C-2 Claimant's resume

C-3 [REDACTED] property ownership information (in Spanish)

C-4 Claimant's separation agreement (in Spanish)

C-5 Bank statement

VII. FINDINGS OF FACT:

- 1) The Claimant applied for West Virginia Works and Food Stamps on August 8, 2006. At that time, the Claimant reported that she had property in [REDACTED] with an estimated value of \$35,000. Although the property was not her homestead and was not for sale, the Claimant indicated that she wished to sell the property but had no information about the procedures for transferring money from

██████ to the United States. The Department denied the Claimant's West Virginia Works and Food Stamp benefits due to excessive assets.

- 2) The Claimant testified that she is the single mother of three boys, two of which are the sons of a former boyfriend who resides in ██████. The Claimant testified that she separated from the boyfriend in 2004, has received no support from him and had inquired about whether the land could be sold with the proceeds used for child support. The Claimant stated that she does not own the property, but the property is in the name of her 11-year-old son ██████ who has dual citizenship in ██████ and the United States. The Claimant indicated that she does not know the exact value of the property, but had gone to the property with a realtor to determine if it could be sold. She stated that her former boyfriend, who has allegedly threatened her, observed the real estate truck and came outside with a machete. She testified that she and the children left ██████ and they currently reside in a camper on her mother's property in ██████ County.
- 3) The Claimant testified that she possesses no legal information for the property and indicated that it has been difficult to obtain documents from the ██████ government. She provided a letter dated October 5, 2006 from her friend, _____, (C-1) which states:

I am a business owner of _____ Hotel in ██████
_____'s situation here in ██████ is a unique problem. She has no rights or owns any property. Her ex-husband has control of everything and the rest is in her son's name _____.
Unfortunately, unless you are like _____ or me, you will come to know that no one owns property in ██████. She is in need of medical help from her own country, does not receive any child support and can barely support her family, so please assist her.
- 4) West Virginia Income Maintenance Manual Section 11.3 (D-2) states that countable assets cannot exceed \$2,000 for the Food Stamp Program (or \$3,000 if at least one Assistance Group member is age 60 or over or disabled). Countable assets cannot exceed \$2,000 for the West Virginia Works Program, regardless of the number of persons in the Assistance Group.
- 5) West Virginia Income Maintenance Manual Section 11.1 defines assets as real and personal property the client has available to meet financial needs. Assets may be liquid or non-liquid, with non-liquid assets defined as those which can be converted or sold for cash.
- 6) West Virginia Income Maintenance Manual Section 11.2D states:

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.

This section lists three examples of inaccessibility, including situations involving legal proceedings, irrevocable agreements and joint ownership, however, it indicates that inaccessibility is not limited to those three situations.

- 7) The Martindale-Hubble Law Directory states that, under [REDACTED] law, property of minor children is considered as property of both parents for sale purposes. Both parents must agree to sell it, and must then maintain the profit for the child's benefit.

VIII. CONCLUSIONS OF LAW:

- 1) Policy reveals that maximum allowable assets for the Food Stamp Program are \$2,000, or \$3,000 when at least one Assistance Group member is age 60 or older or disabled. Maximum allowable assets for West Virginia Works are \$2,000.
- 2) Policy also indicates that to be considered an asset, an item must be owned by or available to the client **and** (emphasis added) available for disposition. The Martindale-Hubble Law Directory states that, under [REDACTED] law, property of minor children is considered as property of both parents for sale purposes. Both spouses must agree to sell it, and must then maintain the profit for the child's benefit.
- 3) Based on this information, the property in question is inaccessible to the Claimant and/or her son since the father of the child must agree to sell the property and maintain the profit for the child's benefit.
- 4) The Department's decision to deny the Claimant's West Virginia Works and Food Stamp benefits was incorrect and benefits should be restored retroactive to August 2006.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department to deny the Claimant's West Virginia Works and Food Stamp benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1stth Day of November, 2006.

**Pamela L. Hinzman
State Hearing Officer**