



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
200 Davis Street
Princeton, WV 24740

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 6, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 17, 2006. Your hearing request was based on the Department of Health and Human Resources' action to terminate your WV Works Cash Assistance and decrease your monthly allotment of food stamp benefits.

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 WV Works Cash Assistance and the Food Stamp Program is based on current policy and regulations. Some of these regulations state as follows: Income received from participation in Title I (VISTA, Americorps VISTA) under the Domestic Volunteer Act of 1973 is considered Earned Income for purposes of determining eligibility and benefit level for the Food Stamp Program and WV Works Cash Assistance. The income is excluded if the volunteer was eligible for or receiving AFDC/U, TANF, WV Works, FS or Medicaid at the time he joined. Once a determination is made, temporary interruptions in benefits do not alter the exclusion. (WV Income Maintenance Manual Section 10.3W)

The information which was submitted at your hearing revealed that you were not eligible for or receiving AFDC/U, TANF, WV Works, FS or Medicaid at the time you joined the program. The Department was correct in their decision to count your Title I VISTA payments as "earned income" in determining your eligibility and benefit level for WV Works Cash Assistance and the Food Stamp Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate your WV Works Cash Assistance and decrease your monthly food stamp allotment.

Sincerely,

Cheryl McKinney
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Jerry Williams, Wyoming DHHR
[REDACTED] Legal Aid

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

Claimant,

v.

**Action Number: 06-BOR-2864
06-BOR-2866**

**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 October 17, 2006 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 October 17, 2006 on a timely appeal, filed August 28, 2006.

It should be noted here that the claimant's benefits have been continued at the previous level pending the outcome of the Fair Hearing.

II. PROGRAM PURPOSE:

The Program entitled Food Stamp 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 food coupons to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department

The Program entitled West Virginia Works is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health and 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
_____, Client Representative, Legal Aid
_____, State Director for Corp for National Service – with Americorp
_____, Project Director for VISTA – Claimant’s supervisor
_____, Claimant’s mother

Jerry Williams, Family Support Specialist, Wyoming DHHR

Presiding at the hearing was Cheryl McKinney, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department is correct in their decision to count claimant’s Title I VISTA payments as “earned income” in determining eligibility and benefit level for WV Works Cash Assistance and the Food Stamp Program.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 10.3W
Code of Federal Regulations 7CFR273.9 (iii)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department’s Exhibits:

- D-1 Hearing Request Summary
- D-2 Notification letter dated 8-16-06 (4 pages)
- D-3 Handwritten request for hearing dated 8-28-06
- D-4 Copy of IG-BR-29 for _____
- D-5 Copy of Hearing Request dated 8-22-06
- D-6 Copy of Hearing Request dated 8-22-06 and Appointment notice dated 9-5-06(4 pages)
- D-7 Copy of Americorp VISTA card for claimant dated 2-3-03
- D-8 Copy of WV Income Maintenance Manual Section 10.3W

D-8A Copy of Memo from Americorps VISTA General Counsel dated 6-13-02

Claimant's Exhibits

C-1 Copy of Notification letter dated 8-29-06

VII. FINDINGS OF FACT:

- 1) The claimant became a member of Americorp on February 3, 2003. (D-7) At that time she was married, living with her husband, not receiving and does not appear to have been eligible for any type of TANF, WV Works, Food Stamps or Medicaid. Both the claimant and her husband were employed at this time and he owned several pieces of heavy equipment, as well as a pontoon boat, which would have been considered assets in determining eligibility for the above mentioned assistance programs.
- 2) The claimant separated from her husband May 9, 2003 and applied for public assistance that same month. She began receiving WV Works and food stamps in June 2003. At the time of approval, claimant reported she was receiving \$809.00 monthly from the Title I VISTA program. The Department made a determination at that time the income would be excluded in determining eligibility.
- 3) In August 2006 the Department determined an error in determining countable income had been made in claimant's case. The Department determined that the VISTA income of \$809.00 monthly must be counted as earned income. The Department sent a letter to claimant on 8-16-06 notifying her that her WV Works Cash Assistance would stop and her food stamps would decrease due to an increase in earned income.(D-2)
- 4) Claimant requested a hearing on August 28, 2006 stating her reason for making this request as "because the VISTA Living Allowance was unlawfully used to determine eligibility in receiving assistance." (D-5 and D-6)
- 5) The claimant testified that she has been a member of Americorp since February 3, 2003, and had attended an orientation there where she was told the income from the VISTA program would not affect eligibility for assistance. She testified that at the time she first became a member of Americorp she was married, and her husband operated a family business, and he owned "trucks and things".
- 6) Testimony from the State Director for Corp of National Services provided the Corporation has interpreted for the last 43 years that there are three basic levels where income from VISTA would not interfere with eligibility for TANF, WV Works, Food Stamps or Medicaid benefits, as follows: (1) if the individual was eligible for and receiving benefits prior to service, (2) if the individual was eligible for the programs but not receiving them, and (3) if the individual becomes eligible for benefits after starting service. The director also testified that the Corporation informs volunteers of this information during "orientation".
- 7) The claimant's Legal Aid Representative cited the Code of Federal Regulations Section 7CFR273.9 as being relevant to this issue. Section 7CFR273.9(iii) states in relevant

part that any payment to volunteers under Title I of the Domestic volunteer Services Act of 1973 shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the title I program. New applicants who were not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income.

- 8) Department's exhibit (D-8A) is a memo from AMERICORP General Counsel which cites policy from Section 404 of the Domestic Volunteer Service Act of 1973, as amended, which states in relevant part as follows:

(f)(1) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this Act shall not in any way reduce or eliminate the leave of or eligibility for assistance or services any such volunteers may be receiving under any governmental program, except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 or the minimum wage, under the laws of the State where such volunteers are serving, whichever is greater.

- 9) WV Income Maintenance Manual Section 10.3W states that income from Title I of the Domestic volunteer Act of 1973 (VISTA) is counted as earned income for the Food Stamp Program and the WV Works Cash Assistance program. The only exception to this is if the volunteer was eligible for or receiving AFDC/U, TANF, WV Works, FS or Medicaid at the time he joined. (D-8)

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in that individuals must have been eligible for or receiving AFDC/U, TANF, WV Works, FS, or Medicaid at the time they join the Title I VISTA Program in order for the income to be excluded in the eligibility determination process. The claimant was considered an applicant when she applied for government benefits in May, 2006. Policy states that new applicants who were not receiving public assistance prior to joining VISTA shall have these volunteer payments included as earned income. The claimant was not receiving or eligible for AFDC/U, TANF, WV Works, Food Stamps or Medicaid at the time she joined VISTA in February 2003.
- 2) Testimony and evidence from Americorp representatives provided the Corporation educates volunteers with their belief that income from Title I VISTA would not interfere with eligibility for TANF, WV Works, Food Stamps or Medicaid benefits, even if the individual does not become eligible for the benefits until after joining the service. I find no relevant evidence or policy to support this. I note that WV Works is a state program funded by state funds. No directive from the federal government seeking

to compensate “volunteers” with state money by changing the eligibility rules for a state program is permissible. As to the federally funded Food Stamp program, the Secretary of Agriculture is charged with administering this program and no rule or memorandum from outside the Agriculture Department can affect the program.

- 3) The Department was correct in their determination to count claimant’s Title I VISTA payment of \$809.00 monthly as earned income in the WV Works Cash Assistance and Food Stamp cases, thus terminating the WV Works Cash Assistance eligibility and reducing the food stamp coupon allotment accordingly.

IX. DECISION:

It is the finding of the State Hearing Officer that the Department is **upheld** in the decision to terminate the claimant’s WV Works Cash Assistance and reduce the monthly allotment of food stamps due to counting the Title I VISTA payments as earned income for both programs.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of November 2006.

**Cheryl McKinney
State Hearing Officer**