



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Jeffrey H. Coben, M.D.
Interim Cabinet Secretary**

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**Sheila Lee
Interim Inspector General**

January 27, 2023



RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-2679 & 22-BOR-2680

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Jonathan Yates, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 22-BOR-2679 & 22-BOR-2680

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing convened on January 25, 2023, on an appeal filed December 29, 2022.

The matter before the Hearing Officer arises from the December 19, 2022 decision by the Respondent to terminate the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits and the Respondent's December 30, 2022 decision to deny the Appellant's application for an extension of West Virginia Works (WVW) cash assistance.

At the hearing, the Respondent appeared by Jonathan Yates, Family Support Specialist. The Appellant was self-represented. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 IG-BR-29 Hearing Request
- D-2 Hearing Summary
- D-3 Notice of Denial dated December 30, 2022 (WVW)
- D-4 Notice of Denial dated December 19, 2022 (WVW)
- D-5 Notice of Denial dated December 19, 2022 (SNAP)
- D-6 Information concerning request for WVW extension dated December 5, 2022
- D-7 Denial of WVW extension dated December 22, 2022
- D-8 West Virginia Income Maintenance Manual § 18.2

- D-9 West Virginia Income Maintenance Manual § 1.4.1.D
D-10 West Virginia Income Maintenance Manual § 10.4.2.D

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant, a recipient of WVW cash assistance, met her 60-month lifetime limit of receipt in December 2022.
- 2) On November 17, 2022, the Appellant requested an extension of WVW benefits based on the domestic violence provision.
- 3) On December 5, 2022, the Respondent requested verification of a domestic violence petition and the Appellant's acceptance and cooperation with a domestic violence program. (Exhibit D-6)
- 4) On December 16, 2022, the Appellant indicated that she had not previously filed a domestic violence petition and was not enrolled in the required domestic violence program. (Exhibit D-6)
- 5) On December 19, 2022, the Respondent issued a Notice of Denial (Exhibit D-4) to the Appellant indicating that WVW benefits would terminate effective December 31, 2022 because the household had "received benefits for 60 months which is the maximum allowable period of time".
- 6) On December 22, 2022, the Respondent denied the Appellant's request for an extension past the 60-month lifetime limit because she had not submitted any court documents related to the domestic violence request. (Exhibit D-7)
- 7) On December 30, 2022, the Respondent issued a Notice of Denial (Exhibit D-3) to the Appellant indicating that WVW cash assistance had been denied because "Your household does not currently meet any of the circumstances under which an extension may be granted as outlined in Chapter 18.2.3 of the Income Maintenance Manual."
- 8) The Appellant was a recipient of SNAP benefits.

- 9) On November 14, 2022, the Respondent issued a Periodic Report Form (PRC2), to the Appellant as a redetermination of benefits. The deadline for the form to be returned was December 30, 2022.
- 10) On December 5, 2022, the Appellant submitted an incomplete PRC2 form which was returned by the Respondent for additional information.
- 11) On December 19, 2022, the Respondent issued a Notice of Denial (Exhibit D-5) indicating that the Appellant's SNAP benefits would terminate effective December 2022 because she "failed to complete the periodic report form". (Exhibit D-5)

APPLICABLE POLICY

West Virginia Income Maintenance Manual 18.2 documents in part:

There is a lifetime limit of 60 months that a family may receive case assistance under Temporary Assistance for Needy Families (TANF) and/or WV WORKS. The presence of even one Assistance Group (AG) member who has reached the lifetime limit 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.

West Virginia Income Maintenance Manual 18.2.3 documents in part:

A temporary extension of up to six 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 sexual harassment and domestic violence, sexual assault, and stalking.

All extension requests must be made prior to the first day of the 60th month. 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 two-parent household, both parents must meet one of the following criteria for the AG to be eligible.

West Virginia Income Maintenance Manual § 18.2.3A Battered or Subject to Extreme Cruelty

For extension purposes these conditions are defined as follows:

- Physical acts that result in , or threaten to result in, physical injury; or
- Sexual abuse; or
- Sexual activity involving a dependent child; or
- Being the caretaker of a dependent child and being forced to engage in non-consensual sex acts; or
- Threats of, or attempts at physical or sexual abuse; or
- Mental abuse, including threats; or
- Neglect or deprivation of medical care; or
- sexual harassment and domestic violence, sexual assault, and stalking

The individual who meets the definition must accept a referral to a program that operates under a State license or through an agreement with the Department of Health and Human Resources (DHHR). In addition, the participant must participate in and follow any plans developed with the program.

Once an extension is approved based on the above criteria, the Case Manager must monitor the case for compliance, The WV WORKS check continues until the situation is resolved or the AG is no longer eligible for a check for other reasons. Normal redetermination procedures apply.

West Virginia Income Maintenance Manual § 18.2.3.B Providing Care for a Relative

For extension purposes, all of the following conditions must be met.

-It must be a single parent household, unless one parent is providing care for the other parent who is disabled; and

-The caregiver would normally be required to meet a work requirement and
-Is needed at home to care for a disabled family member who resides in the home and is not a full-time student; and

-Medical documentation must be provided to support the need for the parent to remain in the home to care for and monitor the disabled family member; and

-No one else is available to provide this care; and

-Such care will not be necessary for more than six months, or the family has made other care arrangements that will be completed within six months, or the family is attempting to make other care arrangements, including application for a Medicaid waiver program.

West Virginia Income Maintenance Manual § 18.2.3.c Late Onset of Incapacity

Participants who experience the onset of a temporary incapacity after the 55th month of WV WORKS may qualify for a one-time extension of up to six months while undergoing treatment for the injury or illness. The Case Manager must obtain a decision of incapacity from the Medical Review Team (MRT), and the decision must indicate that the individual will be able to engage in gainful employment following the period on incapacity. The MRT process must be started immediately upon receiving notice of the illness or injury so that a decision may be obtained for the MRT before the participant reaches his 60 months of benefits. Failure of the participant to accept or continue treatment for the illness or injury before the extension begins will result in denial of the request. Failure to cooperate following the beginning of the extension period will result in case closure.

If it is determined by the MRT or a doctor's report that the individual will be temporarily unable to engage in gainful employment for a period of time on or following his 60th month of eligibility, he may qualify for an extension of up to six months. The number of months granted will depend on the length of time that the MRT has determined him to be unable to engage in a gainful activity. The local office will be responsible for monitoring the medical status of the participant each month.

West Virginia Income Maintenance Manual Chapter 18.2.3.D Disabled

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

Because WV WORKS participants must be referred to the MRT if unable to participate for longer than a six-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.

...

West Virginia Income Maintenance Manual § 18.2.3.E Pregnancy/Age of Child

An AG may qualify for an extension when both of the following conditions are met.

- There is only one adult or emancipated minor living in the household; and
- The pregnant woman will be in her last trimester of pregnancy in the 60th month of TANF receipt; or the AG includes a child who will be less than six months of age in the 60th month of TANF receipt.

West Virginia Income Maintenance Manual § 18.2.3F In a Vocational Training/Education Activity

The extension is based on maintaining satisfactory progress toward course completion in a vocational training or education activity. Satisfactory progress is defined by the facility or course of study but must be expected to result in a measurable outcome, such as a diploma, degree, or certificate which will assist in attaining self-sufficiency.

West Virginia Income Maintenance Manual § 18.2.3G Agency Error

The 60-Month extension committee only may approve an extension based on agency error if during the extension request process, either the local office or the 60th-Month Extension Committee does not act in a timely manner. This must occur between months 55 through 60. No repayment is required if the extension is not approved. The extension is limited to three months.

West Virginia Income Maintenance Manual 18.2.5.C documents in part:

All request for extension are made to a nine-member committee known as the 60-Month Extension Committee, consisting of four regional representatives and five appointees from various state offices, including Social Services, WV WORKS, Division of Planning and Quality Improvement (DPQI), the MRT, and the DFA Family Support Policy Unit.

Once the forms are received in the state office, they are logged in and tracked to make sure information is obtained and a timely decision is made. The participant's Case Manager and the Case Manager's Supervisor are notified of the request.

West Virginia Income Maintenance Manual § 18.2.5.D.1 documents in part:

If an extension is approved, the Committee notifies the local office of the length of the extension and the requirements for compliance with the terms of the extension. The local office notifies the participant of the approval and the participants responsibilities once the extension begins. The local office is responsible for monitoring the time limit to assure that it is not exceeded and that the participant remains eligible for the extension. The Case Manager adjust the months in the eligibility system and documents the Committees decision, reason for the extension and the number of months granted in case comments.

West Virginia Income Maintenance Manual § 18.2.5.D.2 documents in part:

If an extension is denied, the Case Manager must send notice of the decision, along with a Fair Hearing Request form to the participant. This must be documented in case comments. The participant may request a Fair Hearing, but benefits must not be continued pending the Fair Hearing decision.

West Virginia Income Maintenance Manual § 18.2.6 documents in part:

Any participant whose request for extension has been denied for any reason may request a Fair Hearing. Benefits, however, may not be extended beyond the 60th month or be reopened following a 60-month closure while a hearing or decision by the Hearings Officer is pending.

The Hearings Officer may reverse the decision of the Extension Committee and grant an extension of up to six months, or he may rule that the Committee must reconsider the request.

The participant also has the right to a Fair Hearing when the reconsideration results in denial of an extension. The Hearings Officer may rule that the extension was denied in error and instruct the local office to extend benefits or reopen the case for the appropriate extension period.

West Virginia Income Maintenance Manual § 1.2.2 documents in part:

Periodic reviews of total eligibility for recipients are mandated by federal law. These are redeterminations and take place at specific intervals, depending on the program or Medicaid coverage group. Failure by the client to complete a redetermination will result in termination of benefits. If the client completes the redetermination process by the specified program deadline(s) and remains eligible, benefits must be uninterrupted and received at approximately the same time

West Virginia Income Maintenance Manual § 1.4.1.D documents in part:

When a SNAP AG is closed for failure to submit a complete Interim Contact Report (PRC-2), a new application is not needed if the PRC-2 is returned by the last day of the month in which it is due. (This will be the 12th month for cases certified for 24 months and the 6th month for cases certified for 12 months). If the Interim Contact Report (PRC-2) is received in the 7th month or later (for cases certified for 12 months) or 13th month or later (for cases certified for 24 months), the PRC-2 CANNOT be processed by the agency, the AG must complete a new application to receive SNAP. In this situation, the worker will NOT update the eligibility system with any information provided on the PRC-2.

A complete Interim Contact Report is an Interim Contact Report (PRC-2) that has:

- each section answered/addressed by the AG; and
- an acceptable signature by the AG; and
- has all needed verifications of reported changes including but not limited to earned income, unearned income, self-employment income; and
- Has verification of all reported changes in expenses, although failure to provide verification of expenses will not result in loss of benefits, this will only result in loss of a deduction.

Code of Federal Regulations 7 §273.15 (g) documents in part:

Time period for requesting hearing. A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days. Action by the State agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. [Emphasis added] In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

Code of Federal Regulations 7 CFR §273.15(h) documents in part:

Request for hearing. A request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. If it is unclear from the household's request what action it wishes to appeal, the State agency may request the household to clarify its grievance. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

Code of Federal Regulations 7 CFR §273.15(j) documents in part:

Denial or dismissal of request for hearing. (1) The State agency must not deny or dismiss a request for a hearing unless: (i) The State agency does not receive the request within the appropriate time frame specified in paragraph (g) of this section, provided that the State agency considers untimely requests for hearings as requests for restoration of lost benefits in accordance with §273.17; (ii) The household or its representative fails, without good cause, to appear at the scheduled hearing; (iii) The household or its representative withdraws the request in writing; or (iv) The household or its representative orally withdraws the request and the State agency has elected to allow such oral requests. (2) A decision by the hearing authority shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Federal regulations. The decision shall become a part of the record.

Code of Federal Regulations § 273.15(q)(2) documents in part:

A decision by the hearing authority shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Federal regulations. The decision shall become a part of the record.

DISCUSSION

WVWORKS (22-BOR-2680): Assistance Groups may only receive WV WORKS (WVW) cash assistance program benefits for a lifetime amount of 60 months. Policy identifies some provisions which may be considered to allow an assistance group to receive an extension of benefits past the 60-month lifetime limit. Those provisions include individuals which are battered or subject to extreme cruelty, providing care for a relative, the late onset of incapacity, disability, pregnancy or age of child, participation in Vocational Training or an Educational activity, and agency error. All provisions have certain requirements which must be met to establish consideration for an extension.

The Appellant was receiving WVW cash assistance benefits for a single-parent household. In December 2022, the Appellant reached her 60-month lifetime limit, which resulted in the termination of benefits. The Appellant applied for and was subsequently denied a request for an extension of the lifetime limit based on the domestic violence provision outlined in the policy. The Appellant appealed the denial of her extension request.

The Respondent had to prove by a preponderance of the evidence that the Appellant failed to meet the requirements for consideration of an extension under the domestic violence provision.

On September 27, 2022, the Appellant completed a reapplication for WVW cash assistance. On October 27, 2022, the Appellant's eligibility for benefits was established based on verification of closure of the Appellant's daughter's benefits in the State of [REDACTED]. The Respondent discovered that based on the Appellant's reapplication, she received her 59-month of lifetime WVW benefits in November 2022. Mr. Jonathan Yates, Family Support Specialist, testified that a case staffing was completed with the Appellant on November 17, 2022, and the Appellant expressed an interest in applying for an extension of benefits based on the domestic violence provision. The Respondent's Extension Committee requested that the Appellant provide verification of a current domestic violence petition and verification of the Appellant's participation in a domestic violence program which operates through an agreement with the Department of Health and Human Resources (Exhibit D-6). After consultation with the Appellant, it was determined that she did not have a domestic violence petition on file with the court system and she was not currently participating in any type of domestic violence program or counseling. The Appellant

acknowledged that she was not the subject of any domestic violence petition at the time of the extension request. The Appellant elaborated on her financial difficulties and indicated that the Respondent attempted to assist her in obtaining her driver's license and other support services but indicated that she was ultimately unsuccessful in obtaining these services.

Policy is clear that in order to be eligible for an extension to the lifetime limit of WVW benefits through a domestic violence provision, the applicant must be the subject of a domestic violence petition and participate in a domestic violence program approved by the West Virginia Department of Health and Human Resources. Because the Appellant had not filed and maintained a domestic violence petition or was currently participating in any type of domestic violence program such as counseling, etc., the Respondent was correct in its decision to deny the Appellant's request for an extension past the 60-month lifetime limit.

Supplemental Nutrition Assistance Program (22-BOR-2679)-Policy requires that periodic redeterminations of total eligibility for recipients are mandated by federal law. These redeterminations take place at certain intervals during the certification period. Failure to complete these redeterminations results in a termination of benefits. The Appellant was required to complete a redetermination of benefits by December 30, 2022. The Respondent did not receive a completed redetermination by the established deadline date which resulted in a termination of the Appellant's SNAP benefits. The Appellant appealed the decision of the Respondent to terminate benefits.

The Respondent had to prove by a preponderance of the evidence that the Appellant failed to complete the redetermination by the established deadline date.

On December 5, 2022, the Appellant returned an incomplete periodic report form to Respondent. Testimony indicated that the Appellant completed the necessary requirements to reestablish her eligibility for SNAP benefits on January 24, 2023 and benefits were approved.

Federal law requires a redetermination of total eligibility of SNAP benefits. The Appellant was required to complete a redetermination of benefits in December 2022 and failed to provide the necessary documentation in order to complete the redetermination process. Because the Appellant failed to complete a redetermination by the established deadline date, the Respondent was correct in its decision to terminate SNAP benefits.

CONCLUSIONS OF LAW

- 1) An individual is allowed a lifetime receipt of 60-months of WVW cash assistance.
- 2) Policy specifies certain provisions in which an extension of up to six months beyond the lifetime limit may be considered. All provisions for consideration of an extension have additional requirements to be met in order to establish eligibility.
- 3) Policy specifies a domestic violence provision wherein an extension of the lifetime limit may be considered. This provision requires the application to be subject of a domestic

violence petition and be participating in a domestic violence program approved by the West Virginia Department of Health and Human Resources.

- 4) The Appellant did not file a domestic violence petition and was not participating in any domestic violence program at the time of her request for an extension to the lifetime limit.
- 5) The Respondent's decision to deny the Appellant's application for an extension of the 60-month lifetime limit for WVW cash assistance is affirmed.
- 6) Federal law requires the completion of a redetermination of total eligibility for SNAP benefits at certain intervals during a certification period.
- 7) The Appellant did not complete a redetermination of eligibility prior to the expiration of her certification period.
- 8) The Respondent's decision to terminate the Appellant's eligibility for SNAP benefits is affirmed.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's decision to deny the Appellant's request for an extension of the 60-month lifetime limit for WVW cash assistance and the Respondent's decision to terminate Supplemental Nutrition Assistance Program benefits.

ENTERED this _____ day of January 2023

Eric L. Phillips
State Hearing Officer