



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

November 21, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 14, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your food stamp, West Virginia Works and Medicaid 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 the Food Stamp, WV Works and Medicaid Programs is based on current policy and regulations. Some of these regulations state as follows: 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. Examples include legal proceedings (Section 11.2D of the West Virginia Income Maintenance Manual) .

The information which was submitted at your hearing revealed that the property that the Department is considering an asset is not available for disposition due to legal proceedings.

It is the decision of the State Hearing Officer to reverse the proposal of the Department to terminate your food stamp, West Virginia Works and Medicaid benefits.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Yvonne Stephens-Walker, DHHR

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

_____,
Claimant,

v.

Action Numbers: 05-BOR-5750 5752 5753

**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 July 14, 2005 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 July 14, 2005 on a timely appeal, filed May 12, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Programs entitled Food Stamp, WV WORKS and AFDC Medicaid are 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 of Agriculture.

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.

The Aid to Families with Dependent Children (AFDC, AFDCU for unemployed parents) Medicaid Program is designed to provide medical assistance to eligible families with children to age 18. These dependent children must be deprived of parental support due to the death, continued absence, incapacity, or unemployment of the parents. In addition, the family must meet financial eligibility criteria.

III. PARTICIPANTS:

_____, Claimant

_____, Claimant's Mother

Yvonne Stephens-Walker, Department Hearing Representative

Presiding at the Hearing was Margaret M. Mann, 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 claimant meets the asset eligibility requirements for the Food Stamp, WV WORKS and AFDC Medicaid Programs. .

V. APPLICABLE POLICY:

Sections 11.2 and 11.2D of the West Virginia Income Maintenance Manual
7 CFR 273

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notification letters dated 04/27/05
- D-2 Case Comments
- D-3 Tax Ticket

VII. FINDINGS OF FACT:

- 1) The claimant was sent a notice dated 04/27/05 informing her that her benefits would stop effective May, 2005. The reason was that she had excessive assets.
- 2) Testimony from the Department revealed that the claimant has property valued at \$12,500.00. The claimant is not living on the property due to busted water pipes. The

claimant reported living in the home of her mother and this resulted in a 25% reduction in her WV WORKS check. The [REDACTED] Waterworks verified the pipes were busted and needed repaired. The claimant reported the pipes could not be repaired due to the monthly income of \$226. The property is accessible and not listed for sale. She was awarded the property in a divorce settlement. This was information provided by the claimant to the case manager in April, 2005. (D-2) The property is paid for.

- 3) Credible testimony from the claimant and her mother revealed her divorce is not final. She is filing for divorce. The property belongs to her, her husband and daughter. No one is suppose to live on the property until they go for a hearing in family court. The claimant and her husband had a hearing in front of the family law master. She had filed for divorce but the paperwork somehow within the year was lost. She has to refile. The family law master was going to allow her and her daughter to stay in the home. The claimant has juvenile diabetes and cannot stay by herself. She and her husband have been separated for about two years. Her husband has been paying the taxes on the house.
- 4) The tax ticket provided by the Department shows the property listed as _____ and _____. (D-3)
- 5) Section 11.3 of the West Virginia Income Maintenance Manual reads in part that to be eligible for programs administered by the Office of Family Support, the total amount of countable assets cannot exceed certain amounts. The asset levels are \$2,000 for food stamp AGs except \$3,000 for AGs with at least one member age 60 or over or is disabled, AFDC Medicaid - \$1,000 regardless of the number in the AG, and \$2,000 WV WORKS regardless of the number in the AG.
- 6) Section 11.2D of the West Virginia Income Maintenance Manual reads in part that 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. Examples include legal proceedings....

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear that to be considered an asset the item must be owned by or available to the client and available for disposition.
- 2) Credible testimony from the claimant and her mother revealed that the property the Department is considering an asset is tied up in legal proceedings and not available for disposition.

IX. DECISION:

It is the finding of the State Hearing Officer that the Department is reversed in the decision to terminate the claimant's benefits for food stamps, WV WORKS and Medicaid due to excessive assets. The action described in the notification letter dated April 27, 2005 will not be taken,

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of November, 2005.

**Margaret M. Mann
State Hearing Officer**