



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

Bob Wise  
Governor

Paul L. Nusbaum  
Secretary

January 5, 2005



Dear Mr. [REDACTED];

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 16, 2004. Your hearing request, was based on the Department of Health and Human Resources' action, to deny you an extension of the WV WORKS 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 and benefit levels for WV WORKS are determined based on current regulations. One of these regulations specifies in part that, "A temporary extension may be given only once for the adults and emancipated minors in the Assistance Group at the time the extension is approved, unless the extension is based wholly or in part on domestic violence. In order to be eligible for a 6 month extension, the Client must meet one of the following criteria: (1) Battered or Subjected To Extreme Cruelty; (2) Providing Care For A Relative; (3) Late Onset of Incapacity; (4) Disabled; (5) Pregnancy/Age of Child or; (6) In A Vocational Training/Educational Activity" (West Virginia Income Maintenance Manual Chapter 15.6 LIFETIME LIMIT FOR RECEIPT OF CASH ASSISTANCE (TANF, WV WORKS)).

The information submitted at the hearing revealed: You do not meet the established criteria for a six month extension.

It is the decision of the State Hearing Officer, to uphold the action of the Department to deny an extension of the WV WORKS Benefits.

Sincerely,

Ray B. Woods, Jr., M. L. S.  
State Hearing Officer  
Member, State Board of Review

cc: State Board of Review  
Jo Ann Grindstaff, Family Support Specialist

## **WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**

**NAME:**

[REDACTED]

**ADDRESS:**

[REDACTED]

### **SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

#### **I. INTRODUCTION**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 5, 2005 for Mr. [REDACTED]

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 originally scheduled on February 20, 2004 on a timely appeal filed December 16, 2003. Mr. [REDACTED] was unable to attend the scheduled hearing due to his hospitalization. The hearing finally convened on April 16, 2004.

It should be noted here that, Mr. [REDACTED] was not receiving WV WORKS Benefits, at the time of the hearing.

All persons giving testimony were placed under oath. This issue could not be resolved in a pre-hearing conference, conducted on December 4, 2003.

#### **II. PROGRAM PURPOSE**

The program entitled WV WORKS is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

The purpose of WV WORKS is to provide assistance to needy families with children so they can be cared for in their home, reduce dependency by promoting job preparation, work and marriage.

WV WORKS will expect and assist parents and care-taker relatives in at-risk families to support their dependent children. Every parent who receives cash assistance has a responsibility to participate in an activity to help prepare for, obtain and maintain gainful employment. WV WORKS will promote the value and the capabilities of individuals.

The goals of WV WORKS are to achieve more efficient and effective use of public assistance funds, reduce dependency on public program by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

### III. PARTICIPANTS

██████████, Claimant  
Jo Ann Grindstaff, Family Support Specialist - ██████████ District DHHR Office

Presiding at the hearing was, Ray B. Woods, Jr., M. L. S., State Hearing Officer and, A member of the State Board of Review.

### IV. QUESTION(S) TO BE DECIDED

Does Mr. ██████████ qualify for an extension of his West Virginia Works Benefits?

### V. APPLICABLE POLICY

West Virginia Income Maintenance Manual Section 15.6 C *PROVISIONS FOR AN EXTENSION OF THE TIME LIMIT*

### VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

#### DEPARTMENT'S EXHIBITS:

- D-1 Form IG-BR-29
- D-2 Hearing Request dated 12/04/03
- D-3 Notification Letter dated 11/24/03
- D-4 Extension Request Packet and Decision
- D-5 ES-RT-3 (MRT Decision) dated 10/09/03
- D-6 IQAF Printout (AFDC Issuance History - Disbursement) dated 01/16/04
- D-7 ANLM Printout (WV WORKS 24/60 Month Tracking) dated 01/16/04
- D-8 Personal Responsibility Contract (PRC) dated 01/16/98 & 11/27/01, respectively
- D-9 Case Comments dated 09/26/03 - 01/16/04
- D-10 GroupWise Message from Jonalee Young to Jo Ann Grindstaff, dated 10/20/03
- D-11 WVIMM Chapter 15.6 (C) PROVISIONS FOR AN EXTENSION OF THE TIME LIMIT

#### CLAIMANT'S EXHIBITS:

- C-1 Letter from ██████████ dated 03/08/04
- C-2 Letter from ██████████, Attorney at Law, dated 03/08/04
- C-3 List of Medications (13)

### VII. FINDINGS OF FACT

— Ms. Grindstaff provided the following Hearing Summary:

██████████ requested an extension on his 60 months of TANF on 9/16/03. His 60<sup>th</sup> month of TANF will be 2/04. Appropriate paperwork completed and submitted to the Extension Committee on 9/29/03. Department received decision on 11/21/03 that the Extension Committee had denied request to extend TANF beyond the 60 months. Before they made their decision, the Extension Committee did request results of MRT, (Medical Review Team), status. The Committee also wanted to know the status on Mr. ██████████'s claim for disability. Mr.

██████████ was determined by MRT to be incapacitated with review date of 4/04. Client states his SSI has been denied twice and has an attorney working on it for him."

- Ms. Grindstaff completed the Packet for an Extension of 60-Month TANF Limit on September 29, 2003. According to Ms. Grindstaff's testimony, the Supervisor recommends to Approve or Deny the request for an extension and signs the form. The Supervisor did not make a recommendation to Approve or Deny the request **and**, failed to sign the form indicating they had reviewed the packet. (Exhibit D-4).

- The Medical Review Team, (MRT), determined on October 9, 2003 that, Mr. ██████████ met the definition of Incapacitated - AFDC. Mr. ██████████ would be re-evaluated on April, 2004. (Exhibit D-5). According to Ms. Grindstaff's testimony, a determination of "Incapacity" would generally last for thirty (30) days. In this case, MRT approved Mr. ██████████'s "Incapacity" for six (6) months.

- On October 15, 2003, Ms. Grindstaff provided requested information to the Extension Committee. The GroupWise Message stated, "I received the MRT decision on ██████████ 10/14/03. MRT approved him for incapacity with a review date of 4/04. Also, client states his SSI has been denied twice. Client states he has an attorney working on the SSI for him." The Committee confirmed receipt of the information on October 20, 2003.

- The Extension Committee denied Mr. ██████████'s request for an extension of his WV WORKS Benefits, beyond its 60-month lifetime limit, on November 20, 2003. The Committee's reason for the denial was "No sudden onset and Not determined disabled."

- Ms. Grindstaff notified Mr. ██████████ of the Committee's decision, by letter, dated November 24, 2003. (Exhibit D-3).

- Mr. ██████████ completed a Fair Hearing and/or Conference Request Form, (Exhibit D-2), on December 4, 2003.

- The AFDC Issuance History - Disbursement Printout, (Exhibit D-6), indicates Mr. ██████████ received TANF Benefits from July 1, 1997 through January 1, 2004.

- The WV WORKS 24/60 Month Tracking Printout, (Exhibit D-7), indicates Mr. ██████████ received 59 months of TANF Benefits as of January 16, 2004.

- Mr. ██████████ signed Personal Responsibility Contracts, (PRC's), on January 16, 1998 and November 27, 2001, respectively. The PRC states in part on the signature page, "I understand that I have a sixty (60) month, lifetime limit to get welfare benefits, whether I live in the State of West Virginia or in any other state in the United States."

- Ms. Grindstaff did not provide the criteria for the 60 month time limit. She did not know the criteria for requesting an extension. It was agreed by both Ms. Grindstaff and Mr. ██████████ that, the request was based on Mr. ██████████'s disability.

- The State Hearing Officer requested Ms. Grindstaff to send a copy of the policy and any additional communications regarding this particular matter. Ms. Grindstaff was also to send Mr. ██████████ a copy of the same material.

- Mr. ██████████ provided a letter from his doctor, ██████████ D.O. (Exhibit C-1). The

letter was dated March 8, 2004. The letter lists Mr. [REDACTED]'s various medical problems.

- A letter was provided from Mr. [REDACTED]'s Attorney, [REDACTED], dated March 8, 2004. The letter states in part, "This is to verify that the above named Claimant has filed a claim for Social Security and/or SSI and that I am representing him/her in this claim." (Exhibit C-2).
- Mr. [REDACTED] provided a list of thirteen (13) medications he is currently taking. (Exhibit C-3).
- Mr. [REDACTED] expressed his appreciation to Ms. Grindstaff for her time and, being a good Worker.

### **VIII. CONCLUSIONS OF LAW**

West Virginia Income Maintenance Manual Section 15.6 C *PROVISIONS FOR AN EXTENSION OF THE TIME LIMIT* states:

"There are provisions which may allow a family to receive benefits for more than 60 months. There is a limit imposed by the federal government on the percentage of the caseload that is allowed to be exempt from the 60-month requirement.

The limit is 20% of the average monthly number of WV WORKS AG's, minus only the average monthly number of child-only AG's. This number is only valid on a statewide basis. Therefore, the percentage of extensions from county to county may vary greatly.

THE WORKER MUST NOT INFORM THE CLIENT THAT HE IS, OR MAY BE, EXEMPT FROM THE TIME LIMIT DURING THE 60-MONTH ELIGIBILITY PERIOD, UNLESS WRITTEN NOTICE OF APPROVAL HAS ALREADY BEEN RECEIVED FROM THE OFS EXTENSION COMMITTEE

Once an extension is approved, the client must meet the criteria on which the extension was based each month of the extension period. In addition, the individual must be actively engaged in an activity or process designed to further the AG's goal of self-sufficiency. The Worker may close the case at any time during the extension period when the client fails to follow through on requirements established for receipt of the additional months of WV WORKS.

A temporary extension 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 domestic violence. See item 1 below. There is a maximum temporary extension period of up to 6 months, except for item 1 below.

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, is denied. No extensions are approved after AG closure for this reason.

EXCEPTION: Victims of domestic violence who meet the criteria in item C, 1, below, may reapply for WV WORKS after the 60-month closure.

The presence of any adult or emancipated minor who meets at least one of the following criteria is eligible to be considered for an extension of the 60-month time limit. The possible extensions are listed in priority order.

**NOTE:** All extensions are temporary. Unless specified below, an extension may only be approved for up to 6 months and may be approved only once. Even if the situation of another adult, or emancipated minor in the same AG, was responsible for approval of an extension, any other adult, or emancipated minor who received the benefit of the extension, is considered to have received the one-time-only extension.

**1. Battered Or Subjected To Extreme Cruelty**

**NOTE:** An extension based solely or in part on this criteria may be approved multiple times and may exceed the 6-month limit. These multiple extensions need not be consecutive because clients may reapply after case closure.

**a. Recipients**

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; or
- Neglect or deprivation of medical care.

The individual who meets the definition must accept a referral to a domestic violence program that operates under a State license or through an agreement with DHHR. In addition, the client must participate in and follow any plans developed with the program.

Once an extension is approved based on the above criteria, the Worker 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.

**b. Applications After 60-Month Closure**

Applications may be approved for individuals who have received 60 months of

WV WORKS but who fit the criteria outlined in item a, above. The Worker must notify the Extension Committee of the approval and send a completed extension form for its review.

As in any extension, the Worker must monitor compliance and close the case when the client is no longer following a plan or when the situation has been resolved and domestic violence is no longer an issue.

There is no limit to the number of times a household may reapply and be approved so long as the situation remains unresolved and the client is in compliance.

## **2. Providing Care For A Relative**

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

- The care giver would normally be required to meet a work requirement; and
- Is needed in the home to care for a child, spouse, parent or grandparent; and
- The person who needs the care is physically or mentally disabled, as determined by medical evidence, to the extent that he would require institutionalization if not for the care being provided; or
- The person who needs the care requires constant monitoring and frequent medical attention or hospitalization; and
- No one else is available to provide this care.
- Such care will not be necessary for more than 6 months, or the family has made other care arrangements that will be completed within 6 months, or the family is attempting to make other care arrangements, including application for Title XIX Medicaid benefits, if appropriate.

## **3. Late Onset of Incapacity**

Clients 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 6 months while undergoing treatment for the injury or illness. The Worker must obtain a decision of incapacity from MRT, and the decision must indicate that the individual will be able to engage in gainful employment following the period of incapacity. Failure of the client 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.

## **4. Disabled**

Disabled is defined as unable to engage in gainful employment, as determined

by a medically qualified professional. It applies when there is only 1 parent or 1 non-parent caretaker in the household. If there are 2 parents or 2 non-parent caretakers, both must be disabled to qualify for extension based on disability.

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. If not, he must apply for SSI and be referred to MRT prior to approval of an extension. An SSI denial based on no disability does not automatically preclude an extension on this basis if MRT finds him to be disabled. However, the individual must be actively appealing his SSI denial to qualify for an extension.

If it is determined that the individual is not disabled, or is able to engage in gainful employment with no limitations, he does not qualify for consideration of an extension.

If it is determined that the individual is able to engage in gainful employment with some limitations, he may qualify for an extension of up to 6 months to locate suitable employment. The individual must be cooperating with Division of Rehabilitation Services during this period, if appropriate.

If it is determined that the individual is permanently unable to engage in gainful employment, he qualifies for consideration for an extension of up to 6 months to apply for, or appeal prior denials of, statutory benefits. Statutory benefits include, but are not limited to, RSDI, SSI, VA, and/or Railroad Retirement.

## 5. **Pregnancy/Age of Child**

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

- There is only 1 adult or emancipated minor 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 6 months of age in the 60th month of TANF receipt.

**EXAMPLE:** A pregnant woman with one other child also cares for her nephew, age 17. She qualifies for consideration under this extension criteria.

**EXAMPLE:** A pregnant woman with two other children lives with her boyfriend, age 20, who is not the legal father of any of the children. She does not qualify for consideration under this extension criteria.

**EXAMPLE:** A woman with a newborn child lives with her other children and her mother. She does not qualify for consideration under this extension criteria.



When based on a verified pregnancy, the extension remains in effect for up to 6 months. When the pregnancy does not end in a live birth, the extension, if already approved, remains in effect for 2 months following the end of the pregnancy.

When based on age of a child, the extension remains in effect until the child is 6 months old.

#### **6. In A Vocational Training/Educational Activity**

The extension is based on maintaining satisfactory progress toward course completion in a vocational training or educational 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, that will assist in attaining self-sufficiency.

To qualify for consideration of this extension, one of the following situations must exist:

- In his 55th month of TANF receipt, the client is attending a vocational training or an educational activity; or
- In his 55th month of TANF receipt, the client is enrolled to begin vocational training or an educational activity.

Vocational training is preparation for a specific occupation. The training is conducted by an instructor in a non-work site or classroom setting.

Educational activities are limited to literacy programs, high school, ABE and 2- and 4-year college programs.

The extension remains in effect for up to 6 months.

### **IX. DECISION**

According to the policy found at WVIMM Section 15.3 C (3) *PROVISIONS FOR AN EXTENSION OF THE TIME LIMIT* - Late Onset of Incapacity it states,

“Clients 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 6 months while undergoing treatment for the injury or illness. The Worker must obtain a decision of incapacity from MRT, and the decision must indicate that the individual will be able to engage in gainful employment following the period of incapacity. Failure of the client 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.”

A letter from [REDACTED], states Mr. [REDACTED] is seen for ‘a variety of problems.’ The medical problems include chronic obstructive pulmonary disease, asthmatic bronchitis, degenerative disc disease with radiculopathy, back pain and obesity. The important fact about Dr. [REDACTED]’s letter is that, it does not indicate Mr. [REDACTED]’s medical problems have just

recently occurred.

It is the decision of this State Hearing Officer, to uphold the Department's action in this particular matter. The Department's action was proper and correct.

#### **X. RIGHT OF APPEAL**

See Attachment.

#### **XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.