




State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

February 4, 2005



Dear Mr. 

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 6, 2004. Your hearing request was based on the Department of Health and Human Resources' action to deny your request for an extension of West Virginia WORKS benefits beyond the 60-month lifetime limit.

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 based on current regulations. One of these regulations specifies that there is a lifetime limit of 60 months that a family can receive assistance under TANF or WV WORKS. An extension for up to six (6) additional months of benefits can be requested during the final five months of eligibility based on specified circumstances, one of which is if a recipient is disabled. In addition, 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. An individual who is age 18 or over is considered to be disabled if he is unable to engage in any substantial gainful activity due to any medically determined physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months or can be expected to result in death. If there are two parents in the household, both must be disabled / incapacitated to qualify for consideration. (WV Income Maintenance Manual Section 12.2 & 15.6)

The information submitted at and subsequent to your hearing reveals that you are eligible to receive an extension of your WV WORKS benefits based on a disability. Please see section VIII for additional information.

It is the decision of the State Hearing Officer to **reverse** the action of the Agency in denying your request for an extension beyond the 60-month lifetime limit for up to six (6) months.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Selena Straughn, FSS, DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
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 February 4, 2005 for [REDACTED]. This fair 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 convened on December 6, 2004 on a timely appeal filed September 8, 2004.

It should be noted that the claimant's 60-month lifetime limit of WV WORKS will be exhausted effective December 31, 2004.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The program entitled West Virginia Works is set up cooperatively between the Federal and State Government 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 (Public Law 104-193).

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.

III. PARTICIPANTS:

[REDACTED] Claimant
[REDACTED] Claimant's wife
[REDACTED] Claimant's friend
[REDACTED] Claimant's friend

Selena Straughn, Family Support Specialist, DHHR

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in denying the Claimant's request for an extension of WV WORKS benefits beyond the sixty (60) month lifetime limit.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 15.2, 15.6, 12.2 and 20 CFR § 404.1505 Code of Federal Regulations.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 Notice of closure dated 9/8/04.
 - D-2 WVIMM 15.6 Lifetime Limit for Receipt of Cash Assistance / Provisions for Extensions
 - D-3 Request for Extension of 60-month Time Limit
 - D-4 WVIMM 15.6 (E) Extension Procedure
 - D-5 Extension of 60-Month Limit for Cash Assistance (packet) first consideration
 - D-6 ES-RT-3, Disability/Incapacity Evaluation, review by MRT on 5/5/04
 - D-7 Correspondence dated 9/13/04 from [REDACTED]
 - D-8 Case comments from 7/5/01
 - D-9 Request for Extension of 60-Month Time Limit
 - D-10 Extension of 60-Month TANF Limit (packet)
 - D-11 ES-RT-3, Disability/Incapacity Evaluation dated 12/21/00
 - D-12 GroupWise Correspondence between Selena Straughn and Ronald Gilmore
 - D-13 Correspondence to Ronald Gilmore advising of the date/time of the hearing.
 - *D-14a ES-RT-3, Disability/Incapacity Evaluation reviewed by MRT on 1/11/05 & support medical documentation.
 - *D-14b A request for Reconsideration to the Extension Review Committee completed on 1/13/05.
 - *D-14c Notification of Committee Decision dated 1/27/05 & notice to the Claimant accompanied by policy.
- * Indicates receipt subsequent to the hearing.

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) The Claimant requested an extension of his WV WORKS benefits, beyond the 60-month lifetime limit, on the basis of disability. The extension request packet, exhibit D-5, was completed and forwarded to the Extension Committee for review on or about August 18, 2004.
- (2) The Extension Committee determined that the Claimant did not qualify for an extension based on his disability and the Department sent a closure notice to the Claimant on September 8, 2004 (D-1). This notice states, in pertinent part:

Action: Your WV WORKS check will stop. Your last benefits will be received in December 31, 2004.

Reason: The WV WORKS Extension Committee has reviewed your case and has denied you the 6 month extension due to the fact that you have not been found disabled only incapacitated through [sic] the Medical Review Team.

- (3) The Disability / Incapacity Evaluation (Reevaluation), exhibit D-6, reviewed by the Medical Review Team in May 2004 reveals that the Claimant is incapacitated for AFDC Medicaid - It was noted, however, that this appears to have been marked in error as he applied for a WV WORKS Exemption.

Section IV.A., indicates that the Claimant is not performing substantial gainful activity.

Section IV.B., reveals that he has a medically determinable impairment or combination of impairments which significantly limits his ability to perform basic work activity.

Section IV.C., states that his impairment (s) meet or equal the listing of impairments.

- (4) Testimony received at the hearing reveals that the Claimant has been determined "incapacitated" following each of the evaluations by the MRT since his original approval in July 2002.
- (5) Exhibit D-7 confirms that the Claimant has a pending disability claim with the Social Security Administration.
- (6) The Claimant's spouse, [REDACTED], is disabled and receives SSI benefits.
- (7) Exhibit D-8 thru D-11 was submitted by the Ms. Straughn to show that the Extension Committee approved a similar case for up to a 6-month extension based on 6-month incapacity determination by the MRT.
- (8) Because the Claimant's most recent incapacity certification period expired effective November 30, 2004, an Order was issued by the Board of Review directing the Department to have the Claimant's incapacity/disability reevaluated by the MRT, with the results of the evaluation forwarded to the Department's Extension Committee, accompanied by a request for reconsideration for an extension beyond the 60-month life-time limit.
- (9) Exhibits identified as D-14-a,b&c, were received subsequent to the hearing. Exhibit D-14a reveals that the Claimant was found to be incapacitated by the MRT on January 11, 2005. It should also be noted, however, that Section IV,C states "YES," the client's impairment(s) meet or equal the listing of impairments. These documents accompanied a request to the Extension Committee for reconsideration (D-14b) of the Claimant's request for an extension beyond the 60-month lifetime limit. The Extension Committee determined that the Claimant is not disabled in accordance with the requirements found in WV Income Maintenance Manual Section 15.6,C,4 (D-14c).
- (10) WV Income Maintenance Manual Section 15.6, A, specifies that there is a lifetime limit of 60 months that a family may receive cash assistance under TANF and/or WV WORKS.
- (11) WV Income Maintenance Manual 15.6, C, - Provides for possible extensions of the 60-month limit of WV WORKS benefits. This section states that 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. There is a maximum temporary extension period of up to 6 months. Among the circumstances that can be considered for an extension is a request based on disability. This policy states that an extension may be approved based on the disability, if the parent(s) or caretaker(s) are unable to engage in gainful employment, as determined by a medically qualified professional. If there are two parents in the household, both must be incapacitated to qualify for consideration.
- (12) Information regarding a finding of "Incapacity" is found in the WV Income Maintenance Manual Section 15.2,C,2,c. This section addresses incapacity as a deprivation factor and states that both parents must be residing in the home with the children for whom the application is made. A child may be deprived of parental support and care by reason of the physical or mental incapacity of the parent. The incapacity must be supported by medical reports and substantially reduce or eliminate the parent's ability to support or care for the child. The incapacity must be expected to last for a minimum of thirty (30) days. The member of the AG who is the incapacitated parent must be referred to DRS.

- (13) WV Income Maintenance Manual Section 15.6,C,4 provides that disabled is defined as unable to engage in gainful employment, as determined by a medically qualified professional. An extension of WV WORKS benefits can be granted 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. Further, this section states that 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. [Emphasis added]
- (14) West Virginia Income Maintenance Manual § 12.2 (A) & the Federal Code of Regulations found at 20 CFR § 404.1505 provide that the definition of disability for Medicaid purposes is the same as the definitions used by SSA in determining eligibility for SSI or RSDI based on disability. An individual who is age 18 or over is considered to be disabled if he is unable to engage in any substantial gainful activity due to any medically determined physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months [emphasis added] or can be expected to result in death.

VIII. DECISION:

Evidence submitted at the hearing reveals that the Claimant has been found “Incapacitated” by the Medical Review Team at each evaluation since his initial approval in July 2002. The Medical Review Team’s current incapacity certification, dated January 11, 2005, approves the Claimant through July 2005. While it is unclear if the Claimant was officially evaluated by the MRT for a “disability,” the MRT’s determination that his impairment(s) meet or equal the listing of impairments are consistent with a disability rating and he has clearly met the duration requirement found in the state and federal regulations. In addition, the finding of “incapacity,” according to policy, means that the Claimant’s ability to “support” or care for his child is substantially reduce or eliminated. Policy provides that an individual may qualify for a WV WORKS extension beyond the 60-month lifetime limit when – “it is determined that the individual is able to engage in gainful employment with some limitations for up to 6 months to locate suitable employment.” If the Extension Committee elects to disregard what appears to be a finding of disability by definition, the “incapacity” determination confirms that the Claimant’s impairment(s) reduces (employment with some limitations) or eliminates his ability to support his child.

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **reverse** the action of the Agency to deny the Claimant’s request for an extension of WV WORKS benefits beyond the 60-month lifetime limit.

IX. RIGHT OF APPEAL:

See Attachment

X. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29