

**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 8, 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 February 8, 2005 on a timely appeal, filed January 21, 2005.

It should be noted here that the claimant's benefits have not been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled WV Works set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

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.

WV Works will expect and assist parents and caretaker-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 programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

_____, Claimant

Cheryl McKinney, Department Hearing Representative

Judy B. Bell, Family Support Supervisor

IV. QUESTION(S) TO BE DECIDED:

The question to be decided is whether the Department was correct in the decision to authorize a Diversionary Cash Assistance payment in the amount of \$301.00..

V. APPLICABLE POLICY:

Section 1.25S #2 of the West Virginia Income Maintenance Manual reads in part:

Diversionary Cash Assistance (DCA) is available to an applicant at the Worker's discretion only. It is not a program for which the client applies and is found eligible or ineligible. The Worker and/or Supervisor must determine if a DCA payment is appropriate and offer it to an applicant. The applicant may choose or decline without any effect on his eligibility for an ongoing WV WORKS check. **Supervisory approval is required for all DCA payments.**

NOTE: There is a lifetime limit of one DCA payment for each AG. If an AG contains even one member who benefited from a DCA as an adult or emancipated minor, another DCA payment cannot be made to the AG. Diversionary Cash Assistance (DCA) is a payment method available only to WV WORKS applicants. This method allows a maximum lump sum benefit of an amount equal to the maximum WV WORKS benefit amount based on family size multiplied by 3. The amount of the DCA payment is based on need and not automatically issued at the maximum amount. The AG becomes ineligible for 3 months, regardless of the amount of the payment issued.

WV WORKS eligibility must be established and an initial assessment conducted by the Worker before DCA is established.

DCA is available only one time for an applicant family. Acceptance of the DCA payment in lieu of ongoing WV WORKS payments is an option for the client.

Determining the DCA Amount

- Determine the maximum WV WORKS amount that is payable to a family of the same size.

NOTE No incentives or reductions are applied when determining the DCA amount.

- Multiply the amount by 3. This result is the maximum DCA payment allowed for the case.

- Determine the amount needed to meet temporary financial need. The amount may include expenses related to future employment needs and ongoing household expenses.
- Compare the amount of the temporary financial need to the maximum DCA amount. If the DCA is sufficient to meet the need, payment is issued for the amount of the temporary need. If the DCA is not sufficient to meet the need, the Worker and the client may determine that the amount that can be met by the DCA is sufficient and that other arrangements can be made to meet the remainder of the need.

Determining if DCA is Appropriate

- The following guidelines are used to determine if DCA is appropriate:
- The AG must demonstrate a need which cannot be met with current or anticipated family resources.
- A member of the AG must be employed or have a verified promise of employment or other verified source of income within two months of application.
- The AG must be eligible for a WV WORKS check based on the applicant's declaration and the best judgment of the Worker.
- The applicant must agree to accept DCA by signing the Diversionary Cash Assistance Agreement, IM-WVW-3, which lists conditions and expectations,

Appendix A, Chapter 10, West Virginia Income Maintenance Manual reads in part:

Maximum WV Works payment for an AG of 2 is \$301.00.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits

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- Exhibit D-1) Diversionary Cash Assistance Agreement dated 01/10/05
- Exhibit D-2) West Virginia Income Maintenance Manual Section 1.25S #2
- Exhibit D-3) Notification Letter dated 01/11/05
- Exhibit D-4) Department's Summary

Claimants' Exhibits:

- Exhibit C-1) Statements from Dr. [REDACTED]
- Exhibit C-2) Letter from [REDACTED], Esquire, dated 01/17/05
- Exhibit C-3) Report from [REDACTED] dated 01/24/05

Exhibit C-4) Application for Workers' Compensation

VII. FINDINGS OF FACT:

- 1) The claimant applied for WV Works on 01/10/05.
- 2) The claimant indicated he was unable to work until 01/19/05 and presented a medical statement to confirm this. (Exhibit C-1)
- 3) The claimant indicated he was injured on the job and needed help for 01/05 only. WVW policy was explained and if he applied for WVW the agency would be required to count a pay stub received 01/06/05 in the amount of \$393.88 gross. After disregards, the WVW check would be approximately \$64.78 in 01/05. It was explained that the claimant would be eligible for the full \$301.00 in 02/05 if he did not return to work. He indicated he did not need assistance in 02/05 only 01/05.
- 4) The Diversionary Cash Assistance program was explained.
- 5) The claimant signed the OFS-WVW-3, Diversionary Cash Assistance Agreement, on 01/10/05. The claimant agreed "to accept a one-time diversionary cash assistance payment of \$301.00 to meet immediate needs instead of receiving a regular cash assistance payment from the state. I am employed or have a strong possibility of being employed or expect to have specific means of self-support within the next two months." Also, "I will be ineligible for monthly cash assistance for three months beginning with the month diversionary cash assistance payments were issued," (Exhibit D-1)
- 6) The \$301.00 payment was approved by the WV Works supervisor. This was based on the fact the claimant was returning to work very soon, did not have a rent/mortgage obligation, and he is required to pay phone, electric, and fuel oil. The electric bill was paid under the Emergency Assistance program on 01/13/05 and the fuel oil need was paid under the Emergency LIEAP program. The supervisor and worker agreed that the situation warranted a one-month payment.
- 7) _____ testified that when he made the application, he had been off work since 12/30/04. He had one check coming in and after that he had no other check. His shoulder is still hurt and he won't have any income for at least six weeks. If he goes back to work this week, he won't have any income until the 24th. His compensation (Worker's Compensation) has not started. The worker explained she could only use the doctor's statement he provided. He was trying to get in touch with his doctor about the date that was on his statement. It was explained he would not be eligible for three months. He wanted to receive the full benefits. The assistance should be up to \$900.00. He has not had any income. He is living on a prayer. He wasn't given the opportunity to receive the benefit. He had to do what he had to do and could not wait. He received help with his electric and had trouble getting his fuel assistance for kerosene approved.

8) Ms. McKinney testified that the amount of the Diversionary Cash Assistance payment is a discretionary amount. The worker and supervisor meet to discuss the situation and determine the amount of payment. The policy allows for a maximum payment of three months which in the claimant's case would be \$903.00. The determination is made based on the information available at that time. At that time, the doctor's statement said he could go back to work on January 19. (Exhibit C-1) She also had the claimant saying he did not need the help the next month as he was fairly sure he would be going back to work. He needs the assistance right now and that was what his needs were. That is why she went to the supervisor about Diversionary Cash Assistance. The alternatives are discussed with the claimant and he makes the decision on which way he wants to go (DCA or WVW payment). He chose to go with the Diversionary Cash Assistance because it would allow him to have the money at that time.

9) _____ testified he was under the impression that the payment was for three months. It was three months he would not be working.

10) Ms. Bell testified that at the time _____ applied, he honestly felt he would be returning to work on the 19th. It was her opinion along with Ms. McKinney's that one month would most likely satisfy his needs. Had they known he would not be able to return to work, that may have been a different story. One of the drawbacks to the DCA is that it is a one time only transaction.

11) Ms. McKinney testified that the claimant did not contact her about not being able to return to work until a week to ten days after he was approved for the DCA.

12) The hearing request was made on 01/21/05. The notification letter was dated 01/14/05.

13) It should be noted that _____, Attorney, Legal Aid of WV was going to represent the claimant. Ms. _____ was ill the day of the hearing and the claimant wanted to proceed with the hearing without legal representation.

VIII. CONCLUSIONS OF LAW:

1) Policy specifies that DCA is available only one time for an applicant family. Acceptance of the DCA payment in lieu of ongoing WV WORKS payments is an option of the client. The guidelines used to determine if a DCA payment is appropriate include:

The AG must demonstrate a need which cannot be met with current or anticipated family resources.

- A member of the AG must be employed or have a verified promise of
- employment or other verified source of income within two months of application.

- The AG must be eligible for a WV WORKS check based on the applicant's declaration and the best judgment of the Worker.
 - The applicant must agree to accept DCA by signing the Diversionary Cash Assistance Agreement, IM-WVW-3, which lists conditions and expectations,
- 2) The claimant made an application on 01/10/05. Based on the information obtained at that time, it was anticipated the claimant would be returning to work on 01/19/05.
- 3) After evaluating the claimant's circumstances, a payment of \$301.00 was authorized.
- 4) The claimant signed the OFS-WVW-3, Diversionary Cash Assistance Agreement, on 01/10/05. By signing this form he agreed to accept the \$301.00 payment to meet his immediate needs instead of receiving the regular cash assistance payment. He would also be ineligible for cash assistance for three months.

IX. DECISION:

Based on evidence and testimony provided during the hearing, it is the finding of the State Hearing Officer that the Agency followed appropriate policy and procedures in anticipating the claimant's situation and authorizing the Diversionary Cash Assistance (DCA) payment. Therefore, it is the State Hearing Officer's decision to uphold the action of the Agency to approve the DCA payment in the amount of \$301.00.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29