



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

Martha Yeager Walker
Secretary

July 28, 2005



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 25, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your request for an extension of WV 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 for the West Virginia Works Program is based on current policy and regulations. Policy specifies that there is a lifetime limit of 60 months that a family may receive cash assistance under TANF and/or WV WORKS Program. An extension of benefits can be requested and forwarded to the OFS Extension Committee during the final five months of eligibility if the AG meets the criteria of one or more of the special circumstances included in policy. Two of the circumstances for which an individual may base their request for an extension is if they are disabled or Battered or Subjected to Extreme Cruelty. A finding of Disabled means that an individual is unable to engage in gainful employment, as determined by a medically qualified professional. If an extension is approved, the local office is notified by the Committee of the length of the extension period. If an extension is denied, the local office is notified by the Committee and provided an appropriate statement for the local office to use in the denial notice.

The information which was submitted at your hearing fails to establish that you are disabled and there is no evidence to indicate that you are currently experiencing or subject to the threat of the conditions required to be granted an extension under the Battered Or Subject to Extreme Cruelty criteria.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your request for an extension beyond the 60 month lifetime limit.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Mary Swayze, FSS, DHHR
[REDACTED], Esq., Legal Aid of WV

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

██████████
Claimant,

v.

Action Number: ██████████

**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 28, 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 originally scheduled to convene on April 11, 2005 on a timely appeal filed March 10, 2005 but was continued at the request of ██████████, Esq.

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

II. PROGRAM PURPOSE:

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

III. PARTICIPANTS:

_____, Claimant

_____, Esq., Legal Aid of WV

Mary Swayze, FSS, DHHR

Joyce Underwood, FS Supervisor, DHHR

Presiding at the hearing was Thomas E. Arnett, 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 Agency was correct in denying the Claimant's request for an extension of WV WORKS benefits beyond the 60-month lifetime limit.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Sections 15.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Extension of 60-Month TANF Limit, 1st Consideration, completed on February 1, 2005
- D-2 Notification of Committee Decision dated 2/24/05
- D-3 Notification dated 3/16/05

Claimant's Exhibits:

- 1 Claimant's Medical information submitted to the Medical Review Team
- 2 Correspondence from _____, MS, OP Therapist dated July 20, 2005.

VII. FINDINGS OF FACT:

- 1) The Claimant was in her 57th month of WV WORKS/TANF assistance when an Extension of 60-Month TANF Limit packet was completed by Mary Swayze, Family Support Specialist. The Claimant's request for up to a 6-month extension was based on disability and the packet included an evaluation of her medical condition by the Department's Medical Review Team.
- 2) The Extension packet was reviewed and approved by Joyce Underwood, Family Support Supervisor, on February 2, 2005 and forwarded to the Extension Review Committee.

- 3) On February 24, 2005, the Extension Committee notified Ms. Swayze of their decision. Exhibit D-2 includes some of the following pertinent information:

██████ Case # ██████ has been denied.

Committee's Reason for Decision: MRT denied – disabled 3 mo.

- 4) Exhibit D-3 was sent to the Claimant on March 16, 2005. This notice includes the following statements:

Action: Your WV WORKS benefits will not stop until June 2005. Your last benefits will be received in 5/2005, not 4/2005 as previous closure letter stated that you received. This letter is correction to that closure notice. Your benefits for cash assistance will continue through 4/2005 and 5/2005.

Reason: You have received 58 months worth of TANF effective 3/2005, 59 months effective 4/2005, 60 months effective 5/2005. After 5/2005 your assistance group will have received 60 months of cash assistance. Per income Maintenance Manual section 15.6 Lifetime limit for receipt of cash assistance A. Sixty –month time limit that a family may receive. (See attached copy of manual section.)

Policy: West Virginia Income maintenance Manual Section 15.6.

- 5) A hearing on the matter was originally scheduled to convene on April 11, 2005, however, a continuance was granted to allow counsel for the Claimant an opportunity to locate documentation to verify domestic violence. This information was to be provided to the Department so that reconsideration could be requested from the Extension Committee based on the criteria found under WV Income Maintenance Manual, Chapter 15.6.C.1 – Battered Or subjected to Extreme Cruelty. Counsel conceded at the hearing that he was unable to find documentation in the courts to support this claim.
- 6) Counsel for the Claimant requested that the Hearing Examiner consider the Claimant's disability and the fact that she was a victim of sexual abuse and domestic violence in the past.
- 7) Department's exhibit (D-1) is the Extension of 60-Month TANF Limit packet sent to the Extension Committee in February 2005, 1st Consideration. Section A, #12, reveals that a copy of the MRT's decision accompanied the request, and Section F (Temporarily Incapacitated – Sudden or Late Onset) verifies that the extension request was made based on a disability. Section G (46-53) includes information regarding the Claimant's reported disability and states that her SSI application denial is in appeal status.

- 8) Claimant's Exhibit-1 is the packet sent to the Department's Medical Review Team, hereinafter MRT, in an attempt to establish the Claimant's disability. This packet includes:
- **Physician's Summary** (date of last patient contact 8-30-04). Diagnoses include; PTSD, Bipolar disorder, Panic disorder without agoraphobia. The prognosis is poor and the length of time the incapacity /disability is expected to last is "uncertain." The employment limitations statement includes the following: "This client would be unreliable and unpredictable in the workplace. Due to aggression stimulated by flashbacks and panic she could present a danger to others as well.
 - **Treatment Summary** from [REDACTED], PLLC. This document is very old (8/31/01) but includes following diagnostic impressions: Major Depression, Post Traumatic Stress Disorder and Partner-Relational Problem.
- 9) In the DFA-RT-3M, dated 1/28/05 by [REDACTED], the MRT determined that the client is mentally incapacitated (see page 1 of 2, Section II), however, the incapacity was approved effective 12/17/04 (the date of the MRT Transmittal) through July 2005 for a period of eight (8) months, not 3-months as indicated in Exhibit D-2.
- 10) Claimant's Exhibit-2 is correspondence from [REDACTED], MS, OP Therapist, [REDACTED]. In this correspondence, Ms. [REDACTED] states that her client is unable to work due to problems with anxiety and other problems resulting from her Post Traumatic Stress Disorder (PTSD), and that it will be "some time" before the client is able to hold a job.
- 11) Testimony received at the hearing verifies that the Claimant has experienced domestic violence and sexual abuse in the past, however, there is no evidence to indicate that she is currently experiencing domestic violence or sexual abuse.
- 12) 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.

- 13) WV Income Maintenance Manual 15.6.C. provides for possible extensions of the 60-month lifetime limit an AG may receive WV WORKS. 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. If an AG is approved based on any of the conditions listed under Battered Or Subjected to Extreme Cruelty criteria (domestic violence / sexual abuse), the WV WORKS check continues until the situation is resolved or the AG is no longer eligible for a check for other reasons [Emphasis added]. There is a maximum temporary extension period of up to 6 months.

An AG can also be considered for an extension 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.

- 14) West Virginia Income Maintenance Manual, Chapter 12.2 (A):

The definition of disability for Medicaid purposes is the same as the definitions used by the 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 or can be expected to result in death.

VIII. CONCLUSIONS OF LAW:

- 1) A request for an extension of WV WORKS benefits beyond the 60-month lifetime limit based on Battered Or Subjected to Extreme Cruelty can only be approved if the AG is currently experiencing or subject to the threat of the conditions (i.e. domestic violence or sexual abuse) provided in policy – “the WV WORKS check continues until the situation is resolved.” The evidence submitted at the hearing fails to satisfy this requirement.
- 2) The MRT’s evaluation of the Claimant’s medical condition resulted in a finding of Incapacity for a period of eight (8) months, and while this Examiner is unable to determine how this finding was made, the medical documentation submitted at the hearing fails to establish a disability by definition - expected to last for a continuous period of not less than 12 months. The Treatment Summary completed in August 2001 shows a history of mental illness, however, it is outdated and there is no documentation to account for treatment and/or evaluations between this document and the Physician’s Summary completed in August 2004. The Physician’s Summary of August 2004 presents information that is consistent with the findings of the Treatment Summary, but it fails to include a period of time for which the Claimant will be unable to work. The final piece of evidence reviewed was the correspondence provided by the Claimant’s therapist. While this information was helpful, this document also fails to provide a period of time for which the Claimant will be unable to work.

- 3) Based on the information presented at the hearing, the Department followed proper policy and procedure in determining that the Claimant fails to meet criteria necessary to be approved for an extension of WV WORKS benefits beyond the 60-month lifetime limit.

IX. DECISION:

It is the decision of the State Hearing Officer to **Uphold** the Agency's decision to deny the Claimant's request for an extension of WV WORKS benefits beyond the 60-month lifetime limit.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of July, 2005.

Thomas E. Arnett
State Hearing Officer