



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third Street
Elkins, WV 26241**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

July 9, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 3, 2005. Your hearing request was based on the Department of Health and Human Resources' action to terminate your West Virginia Works benefits due to excessive assets.

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. Some of these regulations state as follows: Maximum allowable assets for WV Works are \$2,000 regardless of the number in the assistance group. Generally, all trusts are counted as assets, regardless of their purpose, restrictions on distributions or on the trustee's discretion to distribute the funds, whether acted on or not. (WV Income Maintenance Manual Sections 11.3 and 11.4, JJ, 3)

The information which was submitted at your hearing revealed that your granddaughter has a trust fund valued in excess of \$2,000.

It is the decision of the State Hearing Officer to uphold the action of the Department to terminate your West Virginia Works benefits.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Sharon Straley, FSS, DHHR
[REDACTED], Attorney

**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 9, 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 May 3, 2005 on a timely appeal filed March 22, 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 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

_____, Claimant's attorney

_____, Guardian ad Litem for _____ (participating telephonically)

Sharon Straley, Family Support Supervisor, DHHR

Eric Phillips, Family Support Specialist, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 took the correct action in terminating the Claimant's WV Works benefits as a result of excessive assets.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Sections 11.3 and 11.4, JJ, 3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV Income Maintenance Manual Section 11.3
- D-2 WV Income Maintenance Manual Section 11.4, JJ, 3
- D-3 Income Maintenance Policy clarification dated June 19, 2001
- D-4 WV Works closure letter dated March 15, 2005
- D-5 Court order entered December 8, 2004
- D-6 WV Income Maintenance Manual Section 11.1
- D-7 Request for policy exception due to undue hardship and response

VII. FINDINGS OF FACT:

- 1) The Claimant was receiving WV Works benefits for her granddaughter, _____. A WV Works termination letter (D-4) was sent to the Claimant on March 15, 2005 which states: Action: Your WV Works will stop. You will not receive this benefit after March 2005. Reason: The amount of assets is more than is allowed for this benefit.
- 2) _____ received \$35,000 in an insurance settlement resulting from the death of her mother. Disbursements were ordered by the court to pay attorney and emergency squad fees, with the remaining balance of \$21,000.45 to be held in a trust for the child. Ms. Straley testified that even though Ms. _____ cannot access the funds until age 18, the trust is considered an asset under WV Works policy.

- 3) Ms. [REDACTED] questioned whether the Claimant's case was submitted to the DHHR policy unit to determine whether it could meet an exception under the undue hardship provision. Ms. Straley indicated that she does not feel the case meets guidelines for the undue hardship provision, but that she could submit the case for consideration under that policy. Ms. [REDACTED] testified that the money is being held in her temporary Client Trust Account until the court-ordered trust can be established. Ms. [REDACTED] contended that neither the Claimant nor her granddaughter has access to the money, and that _____ would be deprived of the necessities of life should she lose her West Virginia Works income.
- 4) A court order regarding the settlement dated December 8, 2004 (D-5) indicates that of the \$35,000 proceeds released to _____ as custodian of _____, \$166 should be dispersed to the [REDACTED] Emergency Squad and \$13,833.55 should be dispersed to [REDACTED]. The order specifies that [REDACTED] shall hold \$15,004.45 of the proceeds in her Client Trust Account for use by Ms. _____ in securing a residence and related items for the immediate benefit of _____. Ms. [REDACTED] explained that between \$2,000 and \$3,000 of the funds were used toward house payments, about \$1,000 was paid to a supplemental lien holder, \$100 was used to restore water service in Ms. _____'s residence, \$200 was utilized for clothing for _____, and about \$1,500 was used for appliances/bedroom furniture.
- 5) Ms. _____ testified that _____'s father does not provide her financial support and that the only current household income is her own SSI of \$579 per month. She discussed her monthly expenses, which exceed her SSI income. Ms. _____ stated that her SSI income alone would not allow her to provide the necessities of life for _____ and that she would possibly lose her home without the WV Works income.
- 6) Mr. _____ testified that he served as the guardian ad litem in the insurance settlement for _____. He stated the he was under the impression that the trust was established in such a way that it would not affect any government benefits for _____. He believes the loss of West Virginia Works benefits would cause an undue hardship and said he hopes the trust funds will not be depleted so that _____ will have the money when she gains access at age 18.
- 7) The hearing record remained open for 30 days so that a request for exemption could be explored under the undue hardship provision. Ms. Straley submitted information regarding the case to the policy unit and she received a response on May 23, 2005 from [REDACTED]. The response stated: "The Family Support Policy Unit is denying the request for a hardship provision on this case. Therefore, the trust must be counted as an asset."
- 8) West Virginia Income Maintenance Manual Section 11.3 states the asset limit for the WV Works Program is \$2,000.
- 9) West Virginia Income Maintenance Manual Section 11.4, JJ, 3 states: Generally, all trusts are counted as assets, regardless of their purpose, restrictions on distributions or on the trustee's discretion to distribute the funds, whether acted on or not.
- 10) WV Income Maintenance Manual Section 11.4, JJ, 3 also states that if a revocable trust is not established by a will and does not meet any of four exceptions, the

corpus of the trust is considered an available asset. In regard to irrevocable trusts, if there are any circumstances under which payments from the trust could be made to the client for his benefit, that portion of the corpus, or the interest, is an asset.

- 11) Furthermore, this policy section states: In determining whether payments can or cannot be made from a trust, the Worker must take into account restrictions included in the trust on how payments can be made, the Worker must not take into account when payments can be made. When a trust provides, in some manner, that a payment can be made, even though that payment may be sometime in the future, the trust must be treated as providing that payment can be made from the trust.

VIII. CONCLUSIONS OF LAW:

- 1) Policy specifies that countable assets for the West Virginia Works Program cannot exceed \$2,000.
- 2) In addition, policy states that when a trust is revocable, the corpus of the trust is counted as an asset under the West Virginia Works Program. When the trust is irrevocable, the corpus of the trust is counted as an asset if there are any circumstances under which payment can be made to the client or for his benefit. Consideration of when the funds will be accessible cannot be given. If the funds will be accessible at any time in the future, the trust is considered a countable asset.
- 3) Testimony revealed that about \$21,000 in funds remained for the child's use once attorney and emergency squad payments were disbursed as ordered by the court. The court specified that up to \$15,004.45 of these funds could be utilized for use by the caretaker in securing a residence and related items for the immediate benefit of the child. Ms. [REDACTED] detailed expenditures which have been made from the account, but these expenditures appear to total, at the most, \$5,800.
- 4) Whether the money is in Ms. [REDACTED] temporary Client Trust Account or permanent trust account, remaining funds exceed \$2,000 and are considered an asset in accordance with WV Works policy.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Agency's decision to terminate the Claimant's West Virginia Works benefits as a result of excessive assets.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th Day of July, 2005.

**Pamela L. Hinzman
State Hearing Officer**