



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

October 26, 2005



Dear Mr. & Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 1, 2005. Your hearing request was based on the Department of Health and Human Resources' decision to deny your application for Cash Assistance due to excessive assets.

In arriving at a decision, the State Hearings 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 Cash Assistance, WV Works, is based on current policy and regulations. Some of these regulations state as follows: A client may not have access to some assets. To be considered an asset, the item must be owned by or available to the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset. (WV Income Maintenance Manual §11.2 D.)

The information, which was submitted at your hearing, revealed that your ten year old daughter was left a small piece of land in her Grandmothers Will and that you cannot legally dispose of it. This property should not have been considered an asset.

It is the decision of the State Hearing Officer to reverse the action of the Department to deny your application based on this property being an asset.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Myers, DHHR

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

██████████
Claimant,

Action Number: 05-BOR-6054

**v. 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 September 1, 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 September 1, 2005 on a timely appeal, filed June 23, 2005.

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

██████ co claimant
Cynthia Myers, Family Support Supervisor

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Agency was correct in their actions to deny WV Works, cash assistance based on excessive assets.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy § 11.1, 11.2, 11.3 and 11.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Letter from ██████, Attorney at Law regarding administration of estate.
- D-2 Notice of denial dated May 20, 2005
- D-3 Confirmatory Deed for 2.82 acre tract of land for ██████
- D-4 WV Income Maintenance Manual §9.21, 11.2, 11.3, 11.6
- D-5 Last Will and Testament of ██████
- D-6 Letter from ██████ Attorneys at Law

VII. FINDINGS OF FACT:

- 1) Mr. and Mrs. ██████ applied for cash assistance through the WV Works program on May 12, 2005.
- 2) The claimants disclosed to the department that their ten-year-old daughter had inherited a 2.82 tract of land with house as specified in her grandmother's Last Will and Testament. This Will did not designate a trustee to manage the asset.
- 3) The value of this property is in excess of the allowable asset limits for the WV Works program as well as the Food Stamp program.
- 4) A department attorney advised the caseworker that the underlying meaning in a Will directing the inheritance of property to a minor indicates that the property not be available to the minor until he or she reaches the age of eighteen. The case worker determined that the asset was not available to the household for the purpose of the Food Stamp program. The worker determined that since the WV Works policy §11.2 did not list this type of situation in (Examples of inaccessibility), that the asset was to be considered accessible for disposition.

- 5) The department denied the application for cash assistance and notified the client on May 20, 2005 of the denial.
- 6) The claimant's are in the process of pursuing a court order necessary for them to gain access to their daughter's property in order to legally dispose of it. They have provided for the Department, a letter written by their attorney, [REDACTED] (Exhibit D-6). This letter advises that it is not possible for [REDACTED] to use this asset until she is age eighteen or by order of the [REDACTED] Circuit Court.
- 7) **WV Income Maintenance Manual § 11.1:**
Accessibility of Assets: A client may not have access to certain assets. In order to be considered an asset, the asset must be owned by or available to the client. If the client cannot legally dispose of the asset, it is not treated as an asset.
Trust: Any arrangement, in which a grantor transfers property to a trustee with the intention that it be held, managed or administered by the trustee for the benefit of the grantor or certain designated individuals (beneficiaries).
- 8) **WV Income Maintenance Manual § 11.2:**
Accessibility of Assets: Examples of inaccessibility include, but are not limited to, the following:
 - Legal proceedings such as, probate, liens, items encumbered, or otherwise unavailable, due to litigation are not considered assets until the court proceedings are completed and a court decision is reached.
 - Irrevocable agreements
 - Joint ownership
- 9) **WV Income Maintenance Manual § 11.3:**
To be eligible for programs administered by the Office of Family Support (OFS), the total amount of countable assets cannot exceed the amounts, which are listed in the following chart:
WV Works, 2,000.
- 10) **WV Income Maintenance Manual § 11.6:**
 1. WV Works, AFDC Medicaid
The countable assets of the AG include all assets of the AG members and of individuals.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in Chapter §11.1 that an asset must be accessible and the client must be able to legally dispose of an asset in order for it to be counted as an asset.
- 2) Policy in Chapter §11.2 lists examples of inaccessibility and further states that inaccessibility is not limited to those examples which are listed.
- 3) The property was inherited by the child without any arrangement made for a trustee, so therefore it cannot be considered to be a device similar to that of trust as outlined in Chapter § 11.1.

IX. DECISION:

It is the decision of this Hearing Officer that the claimants do not have the legal ability to dispose of the property owned by their 10 year old daughter and that the minor does not have access to the property until she becomes an adult. This property is not to be considered as an asset in determining eligibility. It is the ruling of this Hearing Officer that the Claimants did not have excessive countable assets during the month of May 2005. I **reverse** the Agency in their actions to deny cash benefits due to assets.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th Day of October, 2005.

Sharon K. Yoho
State Hearing Officer