



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

August 9, 2011

RE: ----- Fair Hearing

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 28, 2011. Your hearing request was based on the Department of Health and Human Resources' action to deny your request for an extension of your WV WORKS cash assistance eligibility past 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 the WV WORKS program are determined based on current regulations. One of these regulations specifies that there is a lifetime limit of 60 months in which a family can receive assistance under TANF or WV WORKS. An extension of benefits beyond the 60-month limit can be requested based on any one of seven specified circumstances found in policy. Among the reasons for which an extension can be granted is for vocational training if the individual is attending and making satisfactory progress, or enrolled to begin a vocational program or another educational activity that will lead to a diploma, certificate, degree or other measure of performance that will assist in finding employment. (WV Income Maintenance Manual Section 15.6)

Information submitted at your hearing shows that at the time of your request for a six (6) month extension, you were enrolled to begin a vocational program that was expected to lead to a certification in the legal clerical business field. You enrolled in the class during your fifty-fifth (55th) month of receipt of WV WORKS cash assistance.

It is the decision of the State Hearing Officer to **reverse** the Department's action to deny your request for an extension of the sixty (60) month lifetime limit based on its determination that you were not enrolled and making academic progress in a vocational training program during your fifty-fifth (55th) month of receipt of WV WORKS cash assistance.

Sincerely,

Cheryl A. Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kathy Brumfield, [REDACTED] DHHR

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1409

**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 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 hearing convened on July 28, 2011.

II. PROGRAM PURPOSE:

The purpose of WV WORKS is to help economically dependent, at-risk families become self-supporting. It is a work-oriented, performance-based, time-limited program that emphasizes employment and personal responsibility. 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 assistance to emphasize employment and personal responsibility.

III. PARTICIPANTS:

-----, Paralegal, Claimant's representative
-----, Claimant
Kathy Brumfield, Department representative

Presiding at the hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

V. QUESTION TO BE DECIDED:

The question to be decided are whether or not the Agency was correct in its decision to deny the Claimant's request for an extension to her sixty (60) month lifetime limit.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 15.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notification letter dated March 9, 2011- Request for Extension of 60-Month Time Limit, four (4) pages
- D-2 Notification letter dated March 25, 2011, Denial notice, one (1) page
- D-3 Notification letter dated May 19, 2011, Reconsideration Denial notice, one (1) page

Claimant's Exhibits:

- C-1 Student Enrollment Confirmation for Adult Basic Education dated June 21, 2010, one (1) page
- C-2 [REDACTED] Career Center Acceptance Letter dated April 13, 2011, one (1) page
- C-3 Customer Service Certificate dated December 20, 2010, one (1) page
- C-4 WorkKeys Career Readiness Certificate dated November 18, 2010, one (1) page
- C-5 Timesheet for month of April 2011 attendance at [REDACTED] Career Center, one (1) page
- C-6 [REDACTED] Adult Basic Education (ABE) plan sheet for start date January 24, 2011, one (1) page
- C-7 [REDACTED] Adult Basic Education Center letter dated July 15, 2011, one (1) page
- C-8 Copy of section from Personal Responsibility Contract dated March 14, 2011, one (1) page
- C-9 Copy of Department's policy from Income Maintenance Manual §15.6, fourteen (14) pages
- C-10 Copy from
- C-11 Copy of Notification letter dated March 25, 2011, Denial of extension request, one (1) page
- C-12 Copy of Letter from Claimant to Department dated April 1, 2011, one (1) page
- C-13 Copy of Letter from Claimant to Department dated May 19, 2011, Denial of Reconsideration request dated May 19, 2011, one (1) page
- C-14 Copy of section from WV State Code §9.9.11 and 9.9.11, one (1) page
- C-15 Pages from Department's computer system showing number of WV WORKS cash assistance checks received by Claimant, seven (7) pages

VII. FINDINGS OF FACT:

- 1) On March 9, 2011, the Claimant was notified (D-1) that she was nearing the sixty (60) month lifetime limit for receipt of WV WORKS cash assistance. She was informed that if her family was experiencing certain specific situations, she may be eligible to apply for an extension of the WV WORKS cash assistance benefits. One of the situations listed involved being in a vocational training or education activity. She was informed that this situation may be considered for the extension if an individual was attending and making satisfactory progress; or enrolled to being a vocational program or another education activity that will lead to a diploma, certificate, degree or other measure of performance that will assist in finding employment. The letter (D-1) informed her that in order to be considered for the extension, she must complete the form by checking the reasons she was requesting the extension and signing the form
- 2) The Department received two requests from the Claimant for extension and denied both requests (D-2, D-3) by letter indicating that she did not meet the criteria as outlined per policy in the West Virginia Income Maintenance Manual §15.6.C. No further specific information was provided.
- 3) The Department's representative, Kathy Brumfield, testified that the requests were denied by the Department's "Extension Committee" because the Claimant was not enrolled and making academic progress in the activity during her fifty-fifth (55th) month of receipt of WV WORKS cash assistance. She stated the committee gave no further explanation for its denial. She stated that April 2011 was the Claimant's fifty-fifth (55th) month. She stated that she understood that the Claimant would have needed to be enrolled and making academic progress in the program by her fifty-fifth (55th) month of receipt of WV WORKS cash assistance in order to meet the policy guidelines. She clarified her understanding further by stating that this would require the Claimant to have been attending the class for some time in order to be making academic progress, "not just being in there a week."
- 4) The Claimant contends that she meets the requirements for being granted an extension of WV WORKS cash assistance based on her enrollment in a vocational activity that will result in a certificate of completion. She stated that she attended SPOKES class, which is a job preparation course, during June 2010 through December 2010, and then spoke to a counselor at [REDACTED] Career Center about taking Adult Basic Education classes to study for the legal/clerical exam in preparation of starting a legal/clerical course in April 2011. She obtained a certificate of successful completion (C-3) for all six modules of the "Through the Customer's Eyes" Customer Service Certification Program on December 20, 2010 for passing all six certification exams. She also obtained a WORKKEYS certificate for career readiness (C-4) on November 18, 2010. The Claimant took the entrance exam for the legal/clerical course on March 31, 2011.
- 5) Additional evidence (C-8) shows that the Claimant signed a Personal Responsibility Contract (PRC) with the Department on March 14, 2011, in which she agreed to maintain eighty-five (85) hours while attending [REDACTED] adult basic education classes to study for the paralegal program. She also agreed to test in April 2011 for the entrance exam. This shows that the

Department was aware of and agreed to the Claimant's plans to test in April 2011 for the entrance exam for the vocational course.

- 6) Additional evidence (C-2) shows that the Claimant received an acceptance letter from [REDACTED] Career Center on April 13, 2011, during her fifty-fifth (55th) month of receipt of WV WORKS cash assistance, which showed that she was accepted to the spring semester of the Legal Clerical Business Program which is a three (3) semester program. The letter informed her that classes will begin on April 27, 2011. The Claimant testified that she is currently attending classes in the program and is scheduled to complete the program in April 2012. She stated that if granted the six (6) month extension for WV WORKS she would then be receiving WV WORKS through January 2012. She added that as part of her vocational training she will be working at job sites during the last semester of the course and would receive some compensation for these efforts during the period after January 2012 and before graduation, thereby enabling her to financially finish the course and obtain a degree from the program. She added that she chose this line of work because she has fibromyalgia and needs to work at a job that is not physically demanding. She stated that her past work as a substitute custodian is too physically demanding for her now that she has this condition.
- 7) Additional evidence (C-12) shows that the Claimant submitted a letter to the Department on April 1, 2011 requesting that it reconsider its recent denial of her request for an extension of her WV WORKS cash assistance. She listed her reasons for the request as:

I have cooperated with the Department of Health and Human Resources for as long as I have received WV [WORKS]. I attended SPOKES Program from July 2010 to January 2, 2011; while there I received a Silver Certificate in WorkKeys and also a certificate in Customer Service. I transferred to [REDACTED] Career Center's Adult Basic Education Program on January 24, 2011; I have attended diligently to improve my mathematics test scores to meet the entrance requirements for [REDACTED] Career Center's Legal/Clerical Program. Copies of SPOKES WorkKeys and Customer Service certificates, and an attendance record and a copy of test scores from Garnet are attached.

In my WV [WORKS] activities my attendance has been good. I have only missed when it was absolutely necessary; such as, doctors appointments or illness, all of which have had documented excuses.

There is documentation in my case file from my doctor in which she suggested that I attend school to rehabilitate myself.

I have met with the counselor at [REDACTED] Career Center, and I have taken the entrance exam for the Legal/Clerical Program on March 31, 2011. She will be sending my acceptance letter to me, and I will be attending orientation on April 26, 2011 and will begin the program on April 27, 2011. I applied for and was approved for a Financial Aid grant for the Legal/Clerical Program at [REDACTED] Career Center.

I would appreciate you taking these reasons into account for my reconsideration, and should any additional information or documentation be needed please feel free to call me...

- 8) WV Income Maintenance Manual, Chapter 15.6.A, states that there is a lifetime limit of 60 months in which a family may receive cash assistance under TANF and/or WV WORKS. The presence of even one AG member who has received TANF and/or WV WORKS as an adult or an emancipated minor renders the entire AG ineligible. Children who continue to reside with an adult or emancipated minor who received TANF and/or WV WORKS for 60 months are not eligible. The amount of the payment received has no bearing on the time limit, so that a payment of \$1 counts as one month toward the 60-month limit.

- 9) WV Income Maintenance Manual, Chapter 15.6.C states, in pertinent part:

There are provisions which may allow a family to receive benefits for more than 60 months.

Once an extension is approved, the client must continue to meet the criteria on which the extension was based each month of the extension period. The Worker may close the case at any time during the extension period when the client fails to follow through on requirements established for receipt of the additional months of WV WORKS.

- 10) WV Income Maintenance Manual, Chapter 15.6.C.6 provides information regarding certain situations for which an extension of benefits may be granted and states in relevant part:

In A Vocational Training/Educational Activity

The extension is based on maintaining satisfactory progress toward course completion in a vocational training or education activity. Satisfactory progress is defined by the facility or course of study, but must be expected to result in a measurable outcome, such as a diploma, degree, or certificate, that will assist in attaining self-sufficiency.

To qualify for consideration of this extension, one of the following situations must exist:

* In his 55th month of TANF receipt, the client is attending a vocational training or an educational activity; or

* In his 55th month of TANF receipt, the client is enrolled to begin vocational training or an educational activity.

Vocational training is preparation for a specific occupation. The training is conducted by an instructor in a non-work site or classroom setting.

The extension remains in effect for up to 6 months. The worker is responsible for monitoring the attendance of the participant during the extension period.

Should their enrollment end, the Worker must send notification and close the WV WORKS benefit.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that there is a lifetime limit of 60 months for adults and emancipated children who receive cash assistance under TANF and/or WV WORKS. There are provisions in policy wherein an individual may qualify for an extension of up to six (6) additional months. Among the reasons for which an extension may be granted is if the client is *enrolled* to begin vocational training during his or her fifty-fifth (55th) month of receipt of WV WORKS cash assistance. This training must be expected to result in a measurable outcome, such as a diploma, degree, or certificate, which will assist the client in attaining self-sufficiency. The extension is based on maintaining satisfactory progress toward course completion, and this is defined by the facility or the course of study.
- 2) The Claimant testified that she requested an extension based on the fact that she enrolled in a vocational training activity during April 2011, which was her fifty-fifth (55th) month of receipt of WV WORKS cash assistance. The evidence shows that she was accepted into the Legal Clerical Business Program at [REDACTED] Career Center on April 13, 2011, and that she was to begin classes there on April 27, 2011.
- 3) The Department's position to deny the Claimant's request for an extension because she was not attending classes and making academic progress – meaning that she had been attending the activity for some time - during her fifty-fifth (55th) month of receipt of WV WORKS cash assistance is not supported by policy. Policy provides two (2) situations in which an individual can meet the criteria for being granted an extension for vocational training; the first being that the individual is attending vocational training or an educational activity during his or her fifty-fifth (55th) month; the second being that the individual is enrolled to begin vocational training or an educational activity during his or her fifty-fifth (55th) month.
- 4) The evidence shows that the Claimant was enrolled to begin classes for a vocational training course during her fifty-fifth (55th) month of receipt of WV WORKS cash assistance, that being the month of April 2011. The course is found to have a measurable outcome, resulting in a certificate or degree upon completion. Although policy provides that the extension is based on maintaining satisfactory progress toward course completion in a vocational activity, it also states that this is determined by the facility or course of study, and not by the Department. The evidence shows that the Claimant was more than satisfactorily completing all activities leading up to the vocational course, and there was no indication by the facility to indicate she was performing other than satisfactory in her participation up to that point. It would not be possible for her to show satisfactory progress in the vocational training program since it had not yet begun; therefore it is reasonable to assume that the showing of satisfactory progress in the vocational training program would be necessary for continuing the extension once granted, and could not be a criterion for initial approval of the extension.
- 5) The Claimant has met all the requirements for requesting an extension of WV WORKS cash assistance based on her enrollment into a vocational course during her fifty-fifth (55th) month of

receipt of WV WORKS cash assistance, and the Department gave no explanation for denial of the request which is supported by policy; therefore, the Department was not correct in its decision to deny the Claimant's request for a six (6) month extension of WV WORKS cash assistance.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the decision of the State Hearing Office to **reverse** the Department's action in denying the Claimant's request for a six (6) month extension of WV WORKS cash assistance. The Department is responsible for monitoring the Claimant's progress during the extension period, as well as taking appropriate action should the Claimant's enrollment end during the extension period.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th Day of August, 2011.

**Cheryl Henson
State Hearing Officer**