



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

November 28, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 16, 2011. Your hearing request was based on the action of the Department of Health and Human Resources to terminate your WV WORKS cash assistance benefits.

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 WV WORKS Program is based on current policy and regulations. Some of these regulations state that for cases in which the caretaker relative is not a natural or adoptive parent, an OFS-WVW-10 form must be signed and completed prior to approval, but not necessarily during the intake interview, to determine if they want to be included in the assistance group (AG). The worker must explain the option of being included or excluded from the AG and answer the client's questions about the consequences of each choice. Each adult and emancipated minor in the WV WORKS AG must receive orientation to the program, as orientation is part of the application process. (West Virginia Income Maintenance Manual §§1.25.G, 1.25.V and §9.21)

Information submitted at your hearing demonstrates that you elected to be included in the WV WORKS AG, but failed to attend orientation. As a result, the Department was correct to terminate your WV WORKS cash assistance benefits effective September 30, 2011.

It is the decision of the State Hearing Officer to **uphold** the Department's action to terminate your WV WORKS benefits.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review
David Dobbs, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 11-BOR-2148

**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 was convened on November 16, 2011 on a timely appeal filed October 5, 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:

-----, Claimant

David Dobbs, Family Support Specialist (FSS) WVDHHR

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department of Health and Human Resources was correct in its action to terminate the Claimant's WV WORKS cash assistance benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapters 1.25 and 9.21

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Notice of Decision dated 8/31/11
- D-3 Notice of Decision dated 9/19/11
- D-4 West Virginia Income Maintenance Manual, Chapter 9.21.A.1
- D-5 West Virginia Income Maintenance Manual, Chapter 1.25.G
- D-6 Two (2) WV WORKS Caretaker Relative Option forms (OFS-WVW-10) – signed by the Claimant on 7/3/11 and 9/6/11
- D-7 Correspondence dated 8/2/11 and 9/8/11 advising of the scheduled orientation appointment

Claimant's Exhibits:

- C-1 [REDACTED] Garage advertisement

VII. FINDINGS OF FACT:

- 1) On or about September 19, 2011, the Claimant was notified via a Notice of Decision (Exhibit D-3) that the Department of Health and Human Resources, hereinafter Department, was terminating her WV WORKS / WV EMPLOYMENT ASSISTANCE PROGRAM (WVEAP) benefits. This notice states, in pertinent part:

Action: Your WV WORKS/WVEAP benefits will stop. You will not receive this benefit after September 2011.

Reason: No one is eligible for WV WORKS because the orientation was not completed.

- 2) The Department, represented by David Dobbs, a Family Support Specialist, purported that the Claimant was an active recipient of cash assistance through WV WORKS as a caretaker relative, and on July 22, 2011, the Claimant participated in a reevaluation of her benefits. Subsequent to the July 22, 2011 interview, a WV WORKS Caretaker Relative Option form, hereinafter WVW-10, was mailed to the Claimant for completion. The WVW-10 allows caretaker relatives an opportunity to choose whether or not they want to be included in the WV WORKS cash assistance benefits and contains the following pertinent language:

As the caretaker relative, but not the natural or adoptive parent, of a child or children who are applying for or receiving a WV WORKS payment from the WV DHHR, I understand that I may choose to be included in the payment group or excluded from it. I understand that there is a 60-month lifetime limit for which I may be included in any cash assistance payment and that each month I choose to be included in this case with the children counts as one of the 60 months.

I also understand that, if I choose to be included, my income and assets, and those of my husband or wife, will be used to determine eligibility for me and the child(ren) and that all the eligibility requirements for cash assistance will apply to me and will be used to determine continuing eligibility for me and the children. This includes any work requirements that would normally apply only to parents of children who receive cash assistance.

Further, I understand that this decision is binding for 12 consecutive months, beginning with the month for which I receive the first payment, regardless of changes in my income, assets or other circumstances and may not be changed even if my case is closed and I reapply within the 12-month period.

The WVW-10 concludes by providing applicants a place to mark their choice (INCLUDE ME IN THE WV WORKS PAYMENT or I CHOOSE NOT TO BE INCLUDED IN THE WV WORKS PAYMENT) and advises of the date (12 months from the signature) when they will be provided an opportunity to reconsider their decision.

- 3) The Department acknowledged that a WVW-10 was not completed during the July 22, 2011 reevaluation interview, but noted that policy indicates the form can be provided to the applicant at a later date. The first WVW-10 was mailed on the same day as the interview and returned to the Department with a signature by the Claimant dated July 3, 2011 (Exhibit D-6). Because the Claimant indicated that she wanted to be included in the WV WORKS payment, correspondence (Exhibit 7) was sent to her on August 2, 2011 advising that she and her spouse must attend a WV WORKS orientation on Friday, August 5, 2011 at 9:45 a.m. When it was determined that the Claimant and her husband failed to appear for the scheduled orientation, a Notice of Decision (Exhibit D-2) was sent to the Claimant on August 31, 2011 advising that her WV WORKS cash assistance benefits would stop effective September 2011.
- 4) David Dobbs testified that he spoke with the Claimant on the phone, explained the importance of her decision on the WVW-10, and clarified the additional WV WORKS requirements that must be completed for eligibility. Because the Claimant's case remained open until the end of September 2011, and the Claimant was provided information to make a more informed decision about whether or not she wanted to be included in the WV WORKS cash assistance benefits, the Department sent the Claimant another WVW-10 on September 2, 2011.
- 5) On September 8, 2011, the second WVW-10 was received – signed by the Claimant on September 6, 2011 (Exhibit D-6). The Department noted that the Claimant again indicated that she wanted to be included in the WV WORKS cash assistance. On September 8, 2011, the

Claimant was notified (Exhibit D-7) that all adults in the household were required to attend orientation on September 16, 2011. When the Claimant and her husband failed to appear for the scheduled orientation, the second Notice of Decision (Exhibit D-3) was sent on September 19, 2011 advising that WV WORKS benefits would stop.

- 6) The Claimant contends that the only reason she indicated she wanted to be included in the WV WORKS cash assistance is so that she and her husband could be eligible for a car through the [REDACTED] Garage (Exhibit C-1). She contended that she was of the understanding that she had to be included in the WV WORKS assistance group (AG) in order to be eligible for a car. She further testified that she does not fully read everything she receives from the Department and that she was confused about the program even after speaking with Mr. Dobbs.
- 7) David Dobbs purported that the vehicle program through the [REDACTED] Garage was discussed when he spoke to the Claimant during the time between receipt of the first and second WVW-10. Mr. Dobbs testified that he explained to the Claimant that an individual receiving WV WORKS benefits can become eligible for a car through the [REDACTED] Garage, but that there are additional work and income requirements. Mr. Dobbs further testified that the WVW-10 must be completed annually at review and that the Claimant would have gone through this procedure during her last review.
- 8) West Virginia Income Maintenance Manual, Chapter 1.25, G, states that for cases in which the caretaker relative is not a natural or adoptive parent, form OFS-WVW-10 must be explained. The form must be signed and completed prior to approval, but not necessarily during the intake interview. The worker must explain the option of being included or excluded from the AG and answer the client's questions about the consequences of each choice. Refusal, or other failure, of the caretaker relative to sign the form results in denial of eligibility for the caretaker relative for at least 12 months. Eligibility continues to be denied beyond 12 months, for as long as the caretaker fails to choose. The original form must be filed in the case record and the client must be given a copy. See Section 9.21 for details about the limited choice for the caretaker.
- 9) West Virginia Income Maintenance Manual, Chapter 9.21, stipulates who must be included in the WV WORKS Assistance Group (AG). According to policy, this includes the non-parent caretaker who has chosen to be included by signing form OFS-WVW-10 within the past 12 months.
- 10) West Virginia Income Maintenance Manual, Chapter 1.25.V states that the purpose of orientation to WV WORKS is to inform all applicants about the program, the general policies and program requirements. Orientation is part of the application process. It is an opportunity to make sure that each person understands the services available and the program requirements. It also gives the applicant an easy way to ask questions and receive answers. This will also begin the assessment process by allowing the worker to determine the issues most important to the applicant. Each adult and emancipated minor in the WV WORKS AG and non-recipient Work-Eligible Individual must receive orientation to the Program.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that a caretaker relative must complete a WVW-10 and choose whether or not they will be included in the WV WORKS AG as a condition of eligibility for WV WORKS cash assistance. Once the caretaker relative makes this choice, it is binding for 12 consecutive months. If the caretaker relative chooses to be included in the AG, each adult and emancipated minor in the WV WORKS AG must attend orientation. Because orientation is part of the application process, failure to attend results in a denied application.
- 2) The evidence submitted in this case reveals that the Claimant was given two (2) different opportunities to choose whether or not she wanted to be included in the WV WORKS AG. Testimony presented by the Claimant reveals that she knowingly chose to be included so that she could be eligible for a vehicle through the [REDACTED] Garage. While the Claimant testified that she does not fully read everything she signs and that she did not understand the information relayed to her by the Department, evidence clearly indicates that she made an informed decision to be included in the WV WORKS AG. As a result, the Claimant and her husband were required to attend orientation. Whereas the evidence demonstrates the Claimant failed to complete the application process when she failed to comply with orientation requirements, the Department was correct to deny/terminate her WV WORKS cash assistance benefits.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the decision of the State Hearing Officer to **uphold** the Department's action to terminate the Claimant's WV WORKS benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of November 2011.

**Thomas E. Arnett
State Hearing Officer**