



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Earl Ray Tomblin  
Governor

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

January 21, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 12, 2011. Your hearing request was based on the Department of Health and Human Resources' action to deny a WV WORKS supportive payment for automobile repair.

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 WV WORKS supportive service payments may be issued during any month for which a WV WORKS payment is made provided the recipient meets criteria designated in policy. (West Virginia Income Maintenance Manual Section 24.14)

Information submitted at your hearing fails to demonstrate that you were ineligible for a WV WORKS supportive payment in October 2010 based on case closure due to excessive income.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in denying a WV WORKS supportive payment for automobile repair based on case closure due to excessive income. The case is remanded to the Department for reevaluation of supportive service eligibility.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
Melissa Gaines, FSS, DHHR

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

-----,

**Claimant,**

**v.**

**Action Number: 10-BOR-2361**

**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 via videoconference on January 12, 2011 on a timely appeal filed October 19, 2010 and received by the Hearing Officer on December 17, 2010.

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

**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  
Melissa Gaines, Family Support Specialist, WVDHHR  
Amy Cottrill, Family Support Specialist, WVDHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Department was correct in its action to deny a WV WORKS supportive payment.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Sections 10.24.D.20 and 24.14

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Copy of WV WORKS Personal Responsibility Contract Part 2 of 2
- D-2 Copy of WV WORKS Personal Responsibility Contract Part 1 of 2
- D-3 Home Visit Checklist
- D-4 Participant Time Sheet for September 2010
- D-5 Car repair estimate
- D-6 West Virginia Income Maintenance Manual Sections 24.14 and 24.16
- D-7 Notice of Decision dated October 15, 2010
- D-8 Verification of child support income and Electronic Benefits Transfer (EBT) transactions

**VII. FINDINGS OF FACT:**

- 1) The Claimant applied for WV WORKS benefits in August 2010 and was placed in a work activity, the SPOKES Program, which she began on September 1, 2010. This information is documented in Exhibit D-2, a WV WORKS Personal Responsibility Contract Part 1 of 2, signed by the Claimant on August 23, 2010. The Claimant also signed Part 2 of 2 (D-1) of her Personal Responsibility Contract, in which she agreed to report changes in her life situation. The Claimant received prorated WV WORKS benefits for August 2010.
- 2) In September 2010, the Claimant received her full WV WORKS benefit of \$301 and Family Support Specialist (FSS) Melissa Gaines testified that the Claimant also received \$656.36 in child support, which was not reported to her worker. When the worker became aware of the child support income in October 2010, the Claimant was determined financially ineligible for WV WORKS assistance. The FSS testified that the October benefit had already been credited to the Claimant's Electronic Benefits Transfer (EBT) account, however, so the Claimant was referred for repayment of her October 2010 benefits.

- 3) The Family Support Specialist testified that the Claimant's September 2010 Participant Time Sheet for the SPOKES Program (D-4) revealed that she only completed 38.5 hours of the 85 hours required to meet her work participation rate. The FSS stated that had the Claimant's case not closed for excessive income, a sanction would have been applied to her benefits based on failure to complete her required hours.
- 4) On October 1, 2010, the Department had received a faxed automobile repair estimate for the Claimant from Dave's Auto Repair and Salvage, Inc. (D-5). The FSS testified that the car repairs could not be approved as a supportive service because the Claimant was no longer eligible for WV WORKS due to excessive income and had been determined ineligible for her October 2010 benefits. In addition, the FSS indicated that the Claimant was not completing her required work hours and could have been issued a bus pass as a transportation alternative.
- 5) The Claimant was notified of the denial of supportive services in a Notice of Decision (D-7) dated October 15, 2010. This notice states, in pertinent part:

ACTION: Your 10/13/10 application for WV WORKS/WVEAP has been denied.

REASON: Income is too much for you to receive benefits.

- 6) The Claimant testified that she did not receive \$656.36 in child support in September 2010 and that her regular, monthly child support payment was kept by the Department. Exhibit D-8 verifies the Claimant's child support income as \$525.09 child support and \$131.27 in arrears for September 2010. However, this exhibit lists the \$525.09 regular child support payment under the "state" column and there is no evidence that this payment was sent to the Claimant.

Exhibit D-8 includes WV WORKS Issuance History computer information and indicates that the Claimant received \$662 in WV WORKS on September 1, 2010. The FSS indicated that the Claimant had received a stimulus payment in September 2010, along with her regular WV WORKS payment of \$301, although the amount of the stimulus was not specified during the hearing. Transaction History from the Electronic Benefits Transfer Administration System shows that \$662 was credited to the Claimant's EBT account on September 1, 2010. The Transaction History shows no other deposits into the Claimant's EBT account until October 1, 2010.

- 7) West Virginia Income Maintenance Manual Section 24.14 (D-6) states, in pertinent part:

Payment for support services is authorized to assist WV WORKS participants in securing or maintaining employment or participating in other activities.

The type and amount of any payment made must be based on need, i.e., without receiving the payment in that amount the client is not able to participate in an activity. Available services must be

discussed and needs assessed by the Case Worker and the client during the interview and assessment process and at reviews. The client may also request services as needs arise.

Support services may be issued during any month for which a WV WORKS payment is made. In addition, some former Work Eligible Individuals in a previous WV WORKS case continue to be eligible for support service payments as long as the conditions in Section 24.16 are met...

A. WHO IS ELIGIBLE

Those who meet all of the following criteria are eligible for payment of support services:

- Work-Eligible Individual in an active WV WORKS case for the month in which the support service payment is intended.
- A non-recipient parent, step-parent, or caretaker relative receiving SSI who has chosen to volunteer to participate in a work activity.
- Participating, or preparing to participate, in a work activity listed in Sections 24.6- 24.13.
- Not in a 3<sup>rd</sup> or subsequent sanction for the month for which the support service payment is intended. Those who are in a 1<sup>st</sup> or 2<sup>nd</sup> sanction period are eligible for support services. There is no corresponding reduction in the amount of the support service payment due to either the 1<sup>st</sup> or 2<sup>nd</sup> sanction.
- Did not receive WV WORKS fraudulently or is not subject to repayment for the total monthly allotment.
- Has not received and is not expected to receive, a DCA payment which covers the month for which the support service is requested.

- 8) West Virginia Income Maintenance Manual Section 10.24.D.20 addresses income received from the American Recovery and Reinvestment Act (ARRA) of 2009 Emergency Fund and states:

The one-time ARRA Emergency Fund payment made to all active WV WORKS and EAP cases in September 2010 in the amount of their current monthly assistance check plus 120% per each case is to be counted as income in the same manner as all other WV WORKS monthly payments.

This section indicates that a WV WORKS Assistance Group receiving a monthly WV WORKS check of \$301 would receive a one-time 120 percent payment of \$361, for a maximum WV WORKS check of \$662 in September 2010

#### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy reveals that WV WORKS supportive service payments may be issued during any month for which a WV WORKS payment is made provided the recipient meets policy criteria.
- 2) While the Department maintained that the Claimant received total child support income of \$656.36 (\$525.09 regular child support plus \$131.27 arrearages) in September 2010, no evidence was provided to verify that regular child support income was received by the Claimant. The Claimant's EBT Transaction History reveals that she received \$662 on September 1, 2010, however, this amount coincides with the one-time ARRA Emergency Fund payment made to all active WV WORKS and EAP cases in September 2010 in the amount of their current monthly assistance check plus 120 percent per each case. No other deposits are listed for September 2010 and child support information provided by the Department fails to verify that the \$525.09 in regular child support was actually sent to the Claimant.
- 3) While the Department contended that the Claimant would have been placed in a sanction for non-participation based on her September 2010 time sheet, her case closed due to excessive income and a sanction was never applied. Therefore, the Department's decision to deny a supportive payment for automobile repair based on financial ineligibility for WV WORKS cannot be affirmed. The case is remanded to the Department for reevaluation of supportive service eligibility.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Department's action to deny the Claimant's request for a supportive payment based on ineligibility for WV WORKS due to excessive income. The case is remanded to the Department for reevaluation of supportive service eligibility.

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 21st Day of January, 2011.**

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**Pamela L. Hinzman  
State Hearing Officer**