



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

April 26, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 14, 2011. Your hearing request was based on the Department of Health and Human Resources' termination of your Employment Assistance Program (EAP) benefits – a WV WORKS post-employment services option – due to insufficient employment hours.

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 Continuation of Services is based on current policy and regulations. Some of these regulations state that when a participant must be employed the required number of hours (West Virginia Income Maintenance Manual, Chapter 24.16).

The information submitted at your hearing revealed that you were not employed the required number of hours.

It is the decision of the State Hearing Officer to **uphold** the Department's termination of your EAP benefits due to insufficient hours.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Melinda Patrick, Family Support Specialist

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

-----,

Claimant,

v.

Action Number: 11-BOR-621

**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 April 26, 2011, 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 April 14, 2011 on a timely appeal, filed February 17, 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

Melinda Patrick, Department representative

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

All persons offering testimony were placed under oath.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct to terminate Employment Assistance Program (EAP) benefits – a post-employment WV WORKS option – to the Claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 24.16

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV WORKS Post-Employment Services Options form
- D-2 Employment verification letter, dated January 31, 2011
- D-3 West Virginia Income Maintenance Manual, Chapter 24.16

VII. FINDINGS OF FACT:

- 1) Melinda Patrick, Family Support Specialist for the Department, testified that in November 2010, she and the Claimant signed a form (Exhibit D-1) explaining post-employment options for WV WORKS recipients closed due to employment. The Claimant chose the option of payments through the Employment Assistance Program (EAP). Upon review of the case in January 2011, Ms. Patrick testified that she received paystubs from the Claimant that documented insufficient work hours to continue receiving EAP payments. Ms. Patrick testified that she contacted the employer to determine if the reduction in hours was voluntary, and received documentation (Exhibit D-2) stating, in pertinent part:

----- has been either calling off or leaving early on a number of occasions for the past several weeks. [REDACTED] has not reduced her hours in any way.

Ms. Patrick testified that she closed the Claimant's EAP benefits due to the documented reduction of hours.

- 2) The Claimant testified that she did not work the required hours, she voluntarily reduced her hours for one month, and that she did not report this change in hours. She testified that she was never told about this policy requirement. Ms. Patrick testified that she routinely reviews the requirements for various Department programs. The Claimant testified that she would not have reduced her hours if she had known about the policy requirement regarding employment hours.

- 3) The West Virginia Income Maintenance Manual, Chapter 24.16, explains WV WORKS continuation of services, and states as follows, in pertinent part (emphasis added):

Effective February 2010, any Work Eligible Individual currently in a post-employment option will have their continuation of services period extended for up to 6 additional months. Initial funding for this program extension was under provisions of the American Recovery and Reinvestment Act (ARRA) of 2009. Any individual whose current period of eligibility ended on January 31, 2010 is not eligible for this extension. There will be a total of up to 12 months of eligibility for either post-employment option. The family may decide at any time during the extension period that they no longer wish to receive the EAP payment, and may not receive PL services instead. The Worker must indicate on the DFA-WVW-15 the total number of months that the family will receive post-employment services.

Beginning January 2008, Work-Eligible Individuals may choose between 2 employment support options any time WV WORKS cash assistance is closed and the participant reports employment. The closure may be at the client's request or may be due to excess income, but **the participant must be employed the required number of hours. See Section A below.** When the client accepts employment and the WV WORKS benefit is closed, the Worker advises the client regarding the benefits of each option and the participant chooses the one best suited to the needs of his family. The participant signs the WV WORKS Post-Employment Services Option form, DFA-WVW-15, to document the decision. The Case Manager must note which option the individual has chosen in Work Programs comments. The participant receives 1 copy of the form and another is placed into the case record. This participant's decision is binding for the post-employment period. Both options may receive bonuses.

Option 1 – This option is a continuation of support services and payments any time WV WORKS cash assistance is closed due to employment which meets the requirements outlined below. Services include case management; support service payments; continuation of and payment for activities such as, but not limited to, job search, job readiness, and skills training. Employed former WV WORKS participants must apply to receive continued support service payments, see Section 24.14.

Option 2 – This option is the West Virginia Employment Assistance Program (EAP). **This program enables the employed former WV WORKS recipient to continue to receive the TANF payment he received prior to becoming employed by use of a 100% earned income disregard for the EAP period. The family must elect to receive the Employment Assistance payment instead of continued support service payments.** Participation hours for this employment may

be projected for up to 6 months by using either pay stubs or a written statement from the employer. If it is apparent that the hours may vary substantially, the EAP participant must provide a time sheet or pay stubs each month to verify the hours.

EXAMPLE

A WV WORKS client reports employment. The income reported is over the program limit so the WV WORKS benefit closes for March. The Worker contacts the client and explains the 2 employment support options and the client chooses the EAP. The Worker mails the DFA-WVW-15 to the client to obtain his signature but the client fails to return the completed form. The client is ineligible to receive either employment support option until the form is returned. In May the client comes in for a SNAP review and completes the form and returns it to the Worker. The client is eligible for EAP benefits from May through February since February is the end of the 12-month period that began in March.

When the AG is closed due to imposition of the 3rd or subsequent sanction, no continued support service payments are issued. Because the participant was not employed at the time the benefits ended, he is not eligible for either employment option even if he later becomes employed during the continuation of services period. When there is no break in receipt of benefits, such as closures due to a late review or during a good cause period and the individual reports employment, he may still receive a continuation of services period.

NOTE: If he meets all eligibility requirements, an employed, non-recipient Work-Eligible Individual who was living with a child who was receiving assistance is also eligible to choose one of these employment support options. These services, support payments, and employment assistance are handled in the same manner as for former recipients who were included in the WV WORKS AG.

NOTE: An individual who was in a PL period as of January 1, 2008, may be eligible for PL payments through the end of their period if he becomes employed during that period.

A. ELIGIBILITY REQUIREMENTS FOR EMPLOYMENT SUPPORT OPTIONS

Individuals who meet all of the following requirements may choose a post employment option:

- Gross family income is 150% or less of the current FPL, excluding SSI income; and
- The family resides in West Virginia; and

- **One adult in the family, who lives in the household, meets all of the following requirements:**

- **Is employed ,**

For the EAP, this must be full-time employment defined for a 1-parent family as 128 hours or more per month or 85 hours for a single parent with a child under 6; and defined for a 2-parent family as 150 hours or more per month or 236 hours when the family receives federally funded child care. For a 2-parent household, the hours required may be met by combining the work hours of both parents.

- Due to employment, the AG exceeds the program income limit or requested the benefit be closed due to employment;
- Received a monthly WV WORKS benefit, not solely a DCA payment, as a Work-Eligible Individual or was in the household as a non-recipient Work-Eligible Individual; and
- Has a dependent child in the home. Dependent child is defined in the WV WORKS parts of Sections 15.2,A,C and D.

VIII. CONCLUSION OF LAW:

- 1) Policy for EAP benefits through WV WORKS continuation of services requires participants to maintain employment at a minimum number of work hours. Testimony from both the Department and the Claimant confirms that this minimum was not met, and that it was due to a voluntary reduction of hours by the Claimant. The Claimant testified that she was unaware of this policy, and would have abided by it if she had known. It is not the Department's responsibility to provide the Claimant a guide to all possible policy outcomes for a given action, prior to that action; considering that the action in question was a voluntary and unreported decision by the Claimant to reduce her work hours, she could have asked the Department worker the consequences of such a decision in advance, or consulted policy on her own. Regardless, the policy is clear. The action of the Department to terminate the EAP benefits of the Claimant due to insufficient work hours is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate the EAP benefits of the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of -----, 2011.

Todd Thornton
State Hearing Officer