



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313
(304) 746-2360, ext. 2227

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

February 10, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 14-BOR-3853

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Donna L. Toler
State Hearing Officer
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

Cc: Maria Sisco-Wilson, Family Support Specialist

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

██████████,

Claimant,

v.

Action Number: 14-BOR-3853

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on January 13, 2015, on an appeal filed December 9, 2014.

The matter before the Hearing Officer arises from the November 24, 2014 decision by the Respondent to terminate Claimant's WV WORKS/WV EAP benefits.

At the hearing, the Respondent appeared by Kathy Brumfield, Family Support Supervisor. The Claimant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Reception Log Search computer screen print
- D-2 Request for Extension of 60-Month Limit, dated November 28, 2014
- D-3 West Virginia Department of Health and Human Resources Extension of 60-Month Limit for Cash Assistance, dated December 24, 2014
- D-4 West Virginia Department of Health and Human Resources Medical Review Team Social Summary Outline
- D-5 E-mail correspondence from Maria Sisco-Wilson to Board of Review/Hearing Officer, dated January 13, 2015
- D-6 E-mail correspondence from Maria Sisco-Wilson to the Board of Review/Hearing Officer, dated February 3, 2015

Claimant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) As a result of a previous hearing in Board of Review Action No.: 14-BOR-2930, conducted on September 17, 2014, the Claimant's request for an extension based upon disability was remanded to the Department to issue a decision regarding the Claimant's request for a six (6) month extension based upon disability and a decision for a three (3) month extension based upon Agency error for failure to evaluate the Claimant for an extension based upon disability.
- 2) The Extension Committee granted the Claimant an extension of three (3) months, the maximum extension based on Agency error for the Department's failure to evaluate the Claimant for an extension based upon disability. The extension began in October 2014 and continued through December 2014.
- 3) The Extension Committee failed to render a decision regarding the Claimant's request for a six (6) month extension based upon disability as directed in the previous hearing decision issued by the Board of Review.
- 4) During the September 2014 hearing in this matter, a Department worker, Maria Sisco-Wilson (Ms. Wilson) provided testimony that she submitted the Claimant's application for disability to the Medical Review Team (MRT), and sent an e-mail to the WV WORKS Policy Unit to be considered by the Extension Committee for an extension based on the Claimant's disability. Ms. Sisco-Wilson added that she notified the Policy Unit that the Claimant's disability was reported to the Department prior to the 60th month, but was not acted upon in a timely manner. Policy requires a worker to submit a request for an extension on the client's behalf if they know the client may qualify for the extension. Ms. Sisco-Wilson acknowledged that the Department knew about the Claimant's disability and had documented details of her disability in the Claimant's case record. (Exhibit D-4)
- 5) Information provided by the Department post-hearing, but prior to the issuing of decision in this matter, indicated that the Claimant was determined disabled by the Medical Review Team through September 2015. (Exhibit D-5)
- 6) On or about November 24, 2014, the Department sent notice to the Claimant that she would receive her final extended cash benefit on December 1, 2014. The notice advised

her that if she wanted to explore receiving further benefits by way of the 60-month extension, she would need to submit another request.

- 7) On or about November 28, 2014, the Claimant completed and submitted a request for an extension based upon disability to the Department. (Exhibit D-2)
- 8) The Claimant testified that she has complied with all the requests for information from the Department. She stated that she has applied for disability with the Social Security Administration and has an open and active case with attorney representation and provided the Department with verification when requested to do so in November 2014.
- 9) On December 24, 2014, a Department worker submitted a second request for an extension based on the Claimant's disability to the Policy Unit for consideration by the Extension Committee. (Exhibit D-3)
- 10) The Department's representative testified that the Extension Committee has not provided a decision to either the initial request submitted in September 2014, nor to the second request submitted in December 2014. The Department's representative added that decisions by the Extension Committee are normally issued within a couple of weeks of the request.
- 11) The Claimant testified that she relies on the cash assistance through the WV WORKS program to pay her rent and living expenses because she is unable to work due to her disabilities.
- 12) Following the hearing, but prior to the issuing of the decision in this matter, the Department provided verification that the Claimant's request for an extension based upon disability had been approved. (Exhibit D-6)

APPLICABLE POLICY

West Virginia Income Maintenance Manual §15.6.A, establishes there is a lifetime limit of 60 months that a family may receive cash assistance benefits under TANF and/or WV WORKS.

West Virginia Income Maintenance Manual §15.6.C, outlines provisions for exceptions to the 60-month limit to receive cash assistance benefits. Exceptions to the 60-month limit are to be considered by the 60-Month Extension Committee. Exceptions include, but are not limited to late onset of temporary incapacity and/or disability.

West Virginia Income Maintenance Manual §15.6.C.7, permits the 60-month Extension Committee to approve an extension based on agency error if the local office does not act in a timely manner. Such an extension is limited to three (3) months.

West Virginia Income Maintenance Manual §15.6.D, requires that the Department conduct a formal case review during the recipient's 55th month of receipt of benefits. The purpose of the review is to assess the progress of the household members towards achieving self-sufficiency and to determine what activities the client needs to complete during the remaining months of eligibility. The review is not discretionary and scheduling of the review is mandatory. The review is to be attended by the client, Case Manager, Supervisor and Community Service Manager or his/her designee, Social Services and any other representatives from agencies which may be of assistance to the client. The group is responsible for determining what can be done to move the family closer to self-sufficiency prior to the 60-month limit and to decide if an extension is appropriate.

West Virginia Income Maintenance Manual §15.6.E, establishes that if a worker or supervisor becomes aware of a client who did not apply for an extension, but may be eligible for one, they are required to notify the WV WORKS Policy Unit immediately for consideration of an extension.

West Virginia Income Maintenance Manual §15.6.F, outlines the Fair Hearing procedure. Any client whose request for an extension has been denied for any reason may request a Fair Hearing. The Hearing Office may reverse the decision of the Extension Committee or he/she may rule the Committee must reconsider the request.

West Virginia Income Maintenance Manual §15.6.C.3, establishes that if it is determined by MRT or a doctor's report that the individual will be temporarily unable to engage in gainful employment for a period of time on or following his 60th month of eligibility, he may qualify for an extension of up to six months. The number of months granted will depend on the length of time that MRT has determined him to be unable to engage in a gainful activity. The local office will be responsible for monitoring the medical status of the client each month

A temporary extension of up to 6 months may be given only once for the adults and emancipated minors in the AG at the time the extension is approved, unless the extension is based wholly or in part on domestic violence. See Battered Or Subjected To Extreme Cruelty below.

DISCUSSION

Policy limits the receipt of WV WORKS cash assistance benefits to a lifetime limit of 60 months. There was no dispute that the Claimant had reached her 60-month lifetime limit.

Policy permits the 60-month Extension Committee to approve an extension of three (3) months based on agency error if the local office fails to act in a timely manner. Evidence establishes that the Department issued a three-month extension due to Agency error for the months of October, November and December 2014. Because policy limits extensions based on agency error to 3 months, the Department was correct in terminating the Agency error extension when the 3 months were exhausted.

Policy requires a worker or supervisor to immediately notify the WV WORKS Policy Unit for consideration of an extension should they become aware of any client who did not apply for an

extension, but may be eligible for one. Evidence presented during the hearing indicated that a request for an extension was made by a Department worker in September 2014. Evidence further established that a second request for an extension based on the Claimant's disability was submitted by a Department worker in December 2014. As of the date of the hearing, the Extension Committee had failed to issue a decision regarding the Claimant's eligibility based on disability. The Claimant provided verification of an active application for disability through the Social Security Administration and complied with the Department's requirement of being determined disabled by the Medical Review Team.

Policy permits a Fair Hearing before the Board of Review for any client whose request for an extension has been denied for any reason. At the time of the hearing, the Department had failed to issue a decision regarding the Claimant's request for an extension based on disability as ordered in the decision of the Hearing Officer issued on September 17, 2014. Subsequent to the issuing of a decision in this matter, the Department provided evidence that the Claimant was approved for an extension based on her disability. Because the Department has approved the Claimant for the requested disability extension, there is no further relief available to the Claimant through the Board of Review.

CONCLUSIONS OF LAW

- 1) Evidence established that because the Department failed to act in a timely matter, the 60-month Extension Committee approved an extension of the Claimant's benefits for the maximum period of three (3) months pursuant to West Virginia Income Maintenance Manual §15.6.C.7, which began in October 2014 and ended in December 2014. The Department was correct in its decision to terminate the Claimant's extension benefits based on Agency error following the issuance of December 2014 benefits.
- 2) Because the Department approved the Claimant for an extension based on disability prior to the issuance of the decision in this matter, there is no further relief available to the Claimant through the Board of Review with respect to the Claimant's request for an extension based on disability.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate the Claimant's extension based on Agency error following the issuance of December 2014 benefits.

Although the Department failed to abide by the Hearing Officer's decision issued on September 17, 2014, to evaluate the Claimant for an extension based on disability, the Department approved the Claimant for an extension based on disability prior to the issuance of this hearing decision. Because, there is no further relief is available to the Claimant through the Board of Review, the issue of an extension based on disability is hereby **dismissed**.

ENTERED this ____Day of February 2015.

**Donna L. Toler
State Hearing Officer**