



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary**

**Christopher G. Nelson
Interim Inspector General**

December 11, 2023



Re: [REDACTED] v WV DHHR
ACTION NO.: 23-BOR-3155

Dear [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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Tanya Tyler, Department Representative, WV DHHR, [REDACTED]

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

IN THE MATTER OF:

ACTION NO.: 23-BOR-3155

[REDACTED]

Appellant,

v.

**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 [REDACTED]. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on November 02, 2023, on an appeal filed October 09, 2023.

The matter before the Hearing Officer arises from the October 03, 2023 determination by the Respondent to terminate the Appellant's West Virginia WORKS (WV WORKS) cash benefits based on reaching the sixty (60) month lifetime limit and denying the Appellant the opportunity to apply for a six (6) month extension.

At the hearing, the Respondent appeared by Tanya Tyler, Family Support Supervisor, DHHR. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV DHHR Notice of Decision, dated October 03, 2023
- D-2 WV DHHR Request for Hearing, dated October 08, 2023
- D-3 West Virginia Income Maintenance Manual (WVIMM) §§ 18.2 through 18.2.1
- D-4 WV IMM § 18.2.3 through 18.2.5.C
- D-5 Blank WV DHHR Request for Extension, dated May 10, 2023

Appellant'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) The Appellant was a recipient of WV WORKS benefits for a two (2) person Assistance Group (AG). (Exhibit D-1)
- 2) On May 10, 2023, the Respondent issued a blank Request for Extension of Sixty (60) Month Time Limit to the Appellant. The notice advised the Appellant that because she has received fifty-five (55) months of WV WORKS program benefits, she may be eligible for an extension beyond the sixtieth (60th) month time limit established by policy. (Exhibit D-5)
- 3) On August 28, 2023, the Respondent Worker denied the Appellant her right to apply for an extension of WV WORKS program benefits.
- 4) On October 03, 2023, the Respondent issued a Notice of Decision to the Appellant indicating that her WV WORKS benefits would terminate effective October 31, 2023 because the household had “received benefits for 60 months which is the maximum allowable period of time.” (Exhibit D-1)
- 5) Subsequent to the October 03, 2023 Notice of Decision, the Appellant requested a Fair Hearing.
- 6) On November 01, 2023, the Appellant’s WV WORKS benefits were terminated, due to reaching the sixty (60) month lifetime limit. (Exhibit D-1)
- 7) The Respondent failed to complete a formal case review after the Appellant received her fifty-fifth (55) month of WV WORKS program benefits.

APPLICABLE POLICY

West Virginia Income Maintenance Manual § 1.2.1.A provides, in part:

In addition to addressing all questions and concerns the client may have, the Worker must explain the benefits of each program and inform the client of his right to apply for any or all of them. No person is denied the right to apply for any Program administered by the Division of Family Assistance (DFA) or the Bureau for Medical Services (BMS). Every person must be afforded the opportunity to apply for all Programs on the date he expresses his interest.

WVIMM § 1.2.1.B provides, in part:

The Worker must provide the requested information to all those who have applied for benefits, or who inquire about the requirements for receiving benefits. This information includes a basic explanation of the eligibility requirements and answers to general questions.

- If the Worker does not know the answer to the general question, he must consult with his Supervisor.
- If the answer is unknown to the Supervisor, they may submit the question to the appropriate Policy Unit.
- Applicants, potential applicants, or their authorized representative must not be referred to the Policy Unit for a direct response.
- The Worker must not act as a financial planner or make suggestions about the client's current or future financial situation.

WVIMM § 1.2.1.C provides, in part:

It is the Worker's responsibility to explain and make available all of the Department of Health and Human Resources' (DHHR) programs for which the applicant could qualify. The Worker must evaluate potential eligibility for all programs based on the available information, unless the applicant specifically states he is not interested in being considered for a specific program.

WVIMM § 1.2.3.A provides, in part:

The Worker has the following general responsibilities in the application process.

- Accept an application from any person or his representative who wishes to apply.
- Determine if the applicant requires special assistance.
- Ensure the client is given the opportunity to apply for all of the Department's programs on the date that he expresses an interest.
- Inform the client of his responsibilities, the process involved in establishing his eligibility, including the Department's processing time limits, and how the beginning date of eligibility is determined.

WVIMM § 1.2.6 provides, in part:

The Department must accept applications submitted by mail, fax, in-person, telephone, or electronically through WV PATH, the Federally Facilitated Marketplace (FFM), or the Social Security Administration (SSA). The Worker must accept an application from any person or his authorized representative who wishes to apply.

WVIMM § 1.3.3 provides, in part:

The DFA-RFA-1 Request for Assistance may be used to protect the date of application for WV WORKS. The form is considered complete when it contains, at a minimum, the applicant's name, address, and signature. The DFA-RFA-1 should be used when the client is in the local office and time does not permit conducting an interview on the date the client wishes to apply for benefits. If the applicant does not follow through with the application requirements for WV WORKS, the correct action is denial of those benefits in the eligibility system. When an application is requested by mail, the DFA-2 or other appropriate program application must be sent. The DFA-RFA-1 must not be mailed to the client.

WVIMM § 1.5.7.E provides, in part:

Discuss the two types of transitional benefit options:

- Option 1 – Up to a six-month period during which the former WV WORKS participant may be eligible for continued support payments and services; or
- Option 2 – The West Virginia Employment Assistance Program (EAP) which allows the employed former WV WORKS recipient to continue to receive the WV WORKS payment he received prior to becoming employed for up to a six-month period.

WVIMM § 18.2.3.A.2 provides, in part:

The Case Manager may approve applications for individuals who have received 60 months of WV WORKS but who meet the criteria outlined above. The Case Manager must notify the Extension Committee of the approval and send a completed extension form for its review. As in any extension, the Case Manager must monitor compliance and close the case when the participant is no longer following a plan or when the situation has been resolved and sexual harassment and domestic violence, sexual assault, and stalking is no longer an issue. The Case Manager must notify the 60-Month Committee when the extension of benefits ends. There is no limit to the number of times a household may reapply and be approved so long as the situation remains unresolved and the participant is in compliance.

WVIMM § 18.2.4 provides, in part:

After a participant has received WV WORKS for 55 months, a formal case review must be conducted. The purpose of this review is to assess the progress of the household members towards achieving self-sufficiency and to determine what activities the participant needs to complete during the remaining months of WV WORKS eligibility. This review is not discretionary. The Case Manager must schedule the review. The participant's attendance at this conference should be included as an item on the last revision of the Self-Sufficiency Plan (SSP) completed before the meeting would normally be scheduled. The Case Manager must schedule the review by issuing a letter to the participant.

The review includes the participant, Case Manager, Supervisor, the Community Services Manager or his designee, Social Services, and any other representatives from agencies that might be of assistance to the participant. The participant may bring his

own representative(s) to the meeting and is responsible for notifying anyone he wants to be involved in the process. This group determines what can be done before the participant reaches the 60-month time limit to move the family closer to becoming self-sufficient. If the group decides an extension is appropriate and additional months are needed, all paperwork for an application for extension must be completed at this time including completion of a Request for Extension of WV WORKS 60-Month Time Limit form (DFA-WVW-100-B) and an Extension Request form (DFA-EX-1). The group will review the extension categories and their definitions to determine the appropriate category to use for the participant's request.

WVIMM § 18.2.5.A provides, in part:

The process for determining if the AG is eligible for an extension begins in the 55th month of the 60-month lifetime limit when the participant is mailed a special notification letter about the end of his 60-month time limit (DFA-WVW-100-A).

WVIMM § 18.2.5.B provides, in part:

The participant must return the notice to the DFA Family Support Policy Unit as indicated on the notice for consideration of an extension of the time limit. If the form is returned to any local DHHR office, the local office must forward it immediately to the DFA Family Support Policy Unit. If the Case Manager or Supervisor becomes aware of a participant who did not apply for an extension but who may be eligible for one, he must notify the DFA Family Support Policy Unit immediately by e-mail for consideration of an extension.

If the participant does not indicate he wants to be considered for an extension and the Case Manager and/or Supervisor do not recommend an extension for him, the family is ineligible after case closure due to the 60-month limit. Advance notice requirements apply, but benefits must not be continued pending a Fair Hearing decision should the AG request a hearing following case closure.

WVIMM § 18.2.6 provides, in part:

Any participant whose request for extension has been denied for any reason may request a Fair Hearing. Benefits, however, may not be extended beyond the 60th month or be reopened following a 60-month closure while a hearing or a decision by the Hearings Officer is pending. The Hearings Officer may reverse the decision of the Extension Committee and grant an extension of up to six months, or he may rule that the Committee must reconsider the request.

The participant also has the right to a Fair Hearing when the reconsideration results in denial of an extension. The Hearings Officer may rule that the extension was denied in error and instruct the local office to extend benefits or reopen the case for the appropriate extension period.

WVIMM § 18.7 provides, in part:

In addition to the responsibilities contained in other chapters of the Income

Maintenance Manual (IMM), the Case Manager has responsibilities related to the work program aspect of WV WORKS. The Case Manager must assist the participant in all reasonable ways to achieve self-sufficiency.

DISCUSSION

The Appellant was receiving WV WORKS program benefits that were set to reach the sixty (60) month lifetime limit. Because there are some provisions which allow a family to receive benefits for up to six (6) months past the sixty (60) month lifetime limit, the Appellant attempted to apply for an extension based on her inability to obtain employment. The Appellant argued that the Department denied her this right on multiple occasions. The Respondent bears the burden of proof to establish that action taken against the Appellant was in accordance with policy. The Respondent had to prove by a preponderance of evidence that the Appellant's WV WORKS benefits were correctly terminated based on reaching the sixty (60) month lifetime limit and that the Appellant was afforded the opportunity to apply for a six (6) month extension.

The Respondent testified that on October 03, 2023, a Notice of Decision was issued to the Appellant advising that her WV WORKS benefits would terminate effective October 31, 2023 because the household had "received benefits for 60 months which is the maximum allowable period of time." On or around the October 09, 2023 Fair Hearing request, the Respondent testified that she mistakenly reopened the Appellant's WV WORKS benefits, as is required by policy for other assistance programs. She testified that, because of her mistake, the Appellant actually received an additional (61st) month of WV WORKS benefits for November 2023. It should be noted that, while not included with the packet of evidence received from the Respondent, both parties spoke of an additional Notice of Decision being issued to the Appellant in November 2023, advising that her WV WORKS benefits would terminate effective November 30, 2023. The Respondent testified that the November 2023 notice was issued due to her mistakenly reopening the Appellant's WV WORKS benefits. The Respondent further testified that once she was made aware of her mistake, she again closed the Appellant's benefits, thus triggering the computer generated termination notice issued to the Appellant on an unknown date, November 2023.

The Appellant argued that "the day after" a telephone discussion with the Respondent, and during a visit "around September" to the Department of Health and Human Resources (DHHR) office, located in [REDACTED] West Virginia, she was denied the ability to apply for an extension of her WV WORKS program benefits. The Appellant stated that, when visiting the [REDACTED] DHHR office regarding her Supplemental Nutrition Assistance Program (SNAP) benefits, because she knew her WV WORKS benefits would be ending in October 2023, she inquired about applying for a six (6) month extension. The Appellant testified that she requested additional information about the extension, along with an application, but was told by [REDACTED] that she could not apply because she was "not eligible." She further testified that during another visit to the [REDACTED] DHHR office at the "beginning of October," she was again denied the opportunity to apply for a six (6) month extension to her WV WORKS benefits. The Appellant surmises that due to tooth loss, she feels discriminated against when interviewing for jobs. She further theorized that she feels potential employers stereotype her as a "former or current drug user," thus hampering her ability to secure employment and why the need for a six (6) month extension to her WV WORKS benefits. The Appellant further testified to receiving a referral to a physician who is currently developing a plan of care for her teeth and anticipates completion within the "next 2 to 3 months." She believes that the completion of her dental work will accelerate her ability to secure

gainful employment. It should be noted that the Appellant did not contest the termination of benefits. In fact, she testified to the contrary when arguing her case.

There were no case comments or documentation provided with the evidence by either party to corroborate the Appellant's visits to the [REDACTED] DHHR Office. However, when the Respondent was questioned to whether the Department has a record of the visits that were not provided with the evidence, the Respondent testified that on August 28, 2023, a case comment entered by [REDACTED] noted that he reviewed the Appellant's files in order to "check and make sure the 60 month limit letter was mailed out." Because the August 2023 case comment was entered some three (3) months after the sixty (60) month time limit notice was issued, by the same Worker the Appellant testified to speaking with during her visit, and because the Appellant's testimony was consistent throughout the hearing and found to be credible, it is reasonable to conclude that an August 2023 visit to the [REDACTED] DHHR Office took place and triggered the Workers August 28, 2023 case comment entry.

When reviewing the evidence, on May 20, 2023, a Request for Extension of 60 Month Time Limit Notice was issued to the Appellant. The Respondent testified that this notice is system generated and automatically issued once a WV WORKS recipient has reached the fifty-fifth (55th) month of benefits. Pursuant to policy, after a participant has received WV WORKS for fifty-five (55) months, a formal case review must be conducted. The purpose of the review is to assess the progress of the household members towards achieving self-sufficiency and to determine what activities the participant needs to complete during the remaining months of WV WORKS eligibility. Policy further provides that this is not discretionary and must be scheduled by the Case Manager. There was no evidence or testimony provided to establish that this meeting took place.

Pursuant to policy § 1.2.1.A, in addition to addressing all questions and concerns the client may have, the Worker has a duty to explain the benefits of each program and inform the client of their right to apply for any or all of them. No person is denied the right to apply for any program on the date they express interest [emphasis added]. There is no question that the Department mishandled the Appellant's case. There is no question that the Department mishandled the Appellant's case. Because the preponderance of evidence showed that the Appellant attempted to complete a Request for Extension of 60 Month Time Limit application prior to the first day of the sixtieth (60th) month as mandated by policy, and because the Respondent did not provide proof that the fifty-five (55) month case review took place, the Respondent's decision cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Policy limits WV WORKS benefits to a lifetime receipt of sixty (60) months.
- 2) Pursuant to policy, no person is denied the right to apply for any program on the date they express interest.
- 3) Policy requires that after a participant has received WV WORKS for fifty-five (55) months, a formal case review must be conducted in order to assess the progress of household members towards achieving self-sufficiency.
- 4) Because the Respondent did not provide proof that a fifty-five (55) month formal case review took place, the Respondent must complete and document the review, as required by the policy.

- 5) Because the Respondent denied the Appellant her right to apply for a six (6) month extension of WV WORKS program benefits, the Respondent must accept and evaluate the Appellant's application for extension.

DECISION

It is the decision of the state Hearing Officer to **REMAND** this matter to the Respondent for completion of a fifty-five (55) month formal case review. The Respondent is to evaluate the Appellant's WV WORKS application for extension as of August 2023. Should the Appellant's application be denied, she may exercise her right to a fair hearing based on the denial.

ENTERED this _____ day of December 2023.

Angela D. Signore
State Hearing Officer