



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch  
Cabinet Secretary

Board of Review  
416 Adams Street Suite 307  
Fairmont, WV 26554  
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Jolynn Marra  
Interim Inspector  
General

October 29, 2019



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 19-BOR-2615

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

cc: Makiba Hopkins, [REDACTED] County DHHR  
Justin Thorne, [REDACTED] County DHHR

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

████████████████████,

**Appellant,**

v.

**ACTION NO.: 19-BOR-2615**

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on October 28, 2019, on an appeal filed October 25, 2019.

The matter before the Hearing Officer arises from the October 25, 2019 determination by the Respondent to deny the Appellant's application for Emergency Assistance –Shelter.

At the hearing, the Respondent appeared by Justin Thorne, ██████████ County DHHR, Economic Service Supervisor. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 West Virginia Income Maintenance Manual (WVIMM) §§ 2.2.3.E – 20.2.4
- D-2 DHHR Application for Emergency Assistance, dated October 24, 2019
- D-3 Magistrate Court of ██████████ County Civil Summons, Petition, and Answer
- D-3 DHHR Notice, dated October 25, 2019

**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 following Findings of Fact are set forth.

## FINDINGS OF FACT

- 1) On September 30, 2019, the Appellant applied for and was denied Emergency Assistance (EA) due to not having a notice of eviction.
- 2) On October 24, 2019, the Appellant completed an application for EA –Shelter (Exhibits D-2 and D-4).
- 3) On October 25, 2019, the Respondent issued a notice advising the Appellant that her application for EA was denied due to “did not cooperate to relieve emergency situation. You have not established that an emergency exists” (Exhibit D-4).
- 4) The October 25, 2019 notice based the denial of EA on West Virginia Income Maintenance Manual Sections 20.2.2 and 20.2.2.A (Exhibit D-4).
- 5) The Appellant’s address at the time of October 24, 2019 application and during the hearing was [REDACTED] (Exhibit D-2).
- 6) On her October 24, 2019 application, the Appellant indicated that she had an eviction notice and \$1,200 was needed to avoid eviction (Exhibit D-2).
- 7) On the application, the Appellant checked “no” to “Are you in need of shelter, clothing, and/or household supplies/furnishing due to a fire or some other man-made or natural disaster” (Exhibit D-2).
- 8) On the application, the Appellant checked “no” to are you in need of emergency transportation” (Exhibit D-2).
- 9) On October 24, 2019, the Appellant advised the Respondent that she was homeless.
- 10) On October 1, 2019, [REDACTED] completed a Petition for Summary Relief for Wrongful Occupation of Residential Rental Property (Petition) due to the Appellant’s rent payment being in arrears in the amount of \$1,200 for September and October rent (Exhibit D-3).
- 11) On October 2, 2019, [REDACTED] County Magistrate Court Clerk, [REDACTED], signed a Civil Summons for Wrongful Occupation of a Residential Rental Property (Summons) (Exhibit D-3).
- 12) On October 2, 2019, the Summons was served on the Appellant in person (Exhibit D-3).
- 13) The Appellant was to appear before the [REDACTED] County Magistrate on October 9, 2019 (Exhibit D-3).
- 14) On October 8, 2019, the Appellant completed an Answer to the Petition which reflected the Appellant admitted in part and denied in part the matters set forth in the petition and to “see attached paper” for her raised defense (Exhibit D-3).

15) On October 24, 2019, the Appellant submitted a copy of the Summons, Petition, and Answer to the Respondent (Exhibit D-3).

### **APPLICABLE POLICY**

#### **West Virginia Income Maintenance Manual (WVIMM) § 20.2.2.A Emergency Need Requirement provides in part:**

An applicant with an emergency need must meet one or both requirements:

- is faced with an existing or imminent crisis of nature that threatens health, safety, and wellbeing; and
- is without available resources to immediately eliminate an existing crisis or prevent an imminent crisis.

See Specific Items of Need in Section 20.2.4 for specific requirements.

#### **WVIMM § 20.2.4. A Shelter provides in part:**

This policy does not apply to homeless applicants. See Rent: Applicants who are EA Eligible Homeless.

#### **WVIMM § 20.2.4.A.1 Rent, Applicants who are EA Eligible Homeless provides in part:**

EA eligible homeless shall include only [emphasis added] the following circumstances:

- Homeless transients for which transportation arrangements to their communities are incomplete; or
- Applicants rendered homeless because their living quarters had been destroyed.

### **DISCUSSION**

The Respondent had to prove by a preponderance of evidence that the Appellant was non-EA eligible homeless at the time the Appellant's October 24, 2019 application was denied.

The Respondent testified that the Appellant was homeless when she completed her October 24, 2019 application and was ineligible for EA. The Appellant initially argued that she visited the Respondent on October 19, 2019 and that the Respondent copied her court-issued documentation. The Respondent testified that October 19, 2019 was a Saturday. The Appellant then testified that she meant to say October 18, 2019. The Petition, Summons, and Answer submitted as evidence verified a DHHR received-date stamp of October 24, 2019. No evidence was entered to corroborate

that the Appellant had submitted her eviction notice information to the Respondent between her September 30 and October 24, 2019 EA applications.

The Appellant argued that she was advised on October 18 or 19, 2019 that because she was in a sanction she was ineligible for EA. The Appellant argued that she visited the Respondent on October 24, 2019 to file an appeal of the Respondent's imposition of a WorkForce sanction. Evidence demonstrated that her sanction was lifted on that date. The Appellant argued that if she had threatened to file an appeal on October 19, 2019 that she would have had her sanction lifted and been found eligible for EA. The Respondent argued that there was no record that the Appellant had visited the DHHR office, applied for EA, or submitted court-issued documentation between the September 30 and October 24, 2019 application. The Respondent testified that the Appellant's WorkForce sanction was lifted on October 24, 2019 due to the Respondent re-evaluating the Appellant's record and determining that the Respondent failed advise the Appellant on September 30, 2019 that she should register for WorkForce on that date –prior to the October 1, 2019 imposition of a WorkForce sanction. The Respondent testified that the Appellant's September 30, 2019 application for EA was denied due to her not having an eviction notice at that time.

The evidence demonstrated that one day following the denial of the Appellant's September 30, 2019 EA application, the Appellant's landlord petitioned for her eviction due to non-payment of her September and October rent. The Summons reflected that the Appellant was to appear before the magistrate on October 9, 2019. The Answer submitted as evidence was incomplete. The document reflected "see attached" and no supporting documentation was entered as evidence.

The Respondent's decision was based on the Appellant's October 24, 2019 report of being homeless. The Appellant testified that she appeared to court on October 9, 2019 and was subsequently evicted; however, no eviction order was entered as evidence to corroborate that the Appellant was actually evicted. At the time of the hearing, the Appellant's address continued to be the address listed on the October 24, 2019 EA application and October 1, 2019 Petition. Even so, the Appellant testified that she was kicked out of her apartment on October 23, 2019 and was homeless at the time of the Respondent's October 25, 2019 denial of EA eligibility.

The Appellant testified that she was told by an unidentified party that because her landlord refused to accept DHHR payment that the Respondent would assist the Appellant with first month's rent and deposit. No evidence was entered to demonstrate that the Appellant's landlord had refused DHHR payment or that the Respondent had advised the Appellant that she was eligible for first month's rent and deposit assistance. As no notice had been issued regarding denial of eligible deposit and rent payment, arguments regarding this issue were not considered in the decision of this Hearing Officer.

### **CONCLUSIONS OF LAW**

- 1) At the time of the Respondent's October 25, 2019 denial of Emergency Assistance (EA) eligibility, the Appellant was homeless.

- 2) Policy provides that EA eligible homeless individuals are transients with incomplete transportation arrangements or individuals rendered homeless because their living quarters had been destroyed.
- 3) The Appellant was not an EA eligible homeless individual at the time of the Respondent's October 25, 2019 EA eligibility denial.
- 4) Because the Appellant was homeless at the time of her October 24, 2019 application for EA –Shelter, the Respondent's action to deny the Appellant EA eligibility was correct.

### **DECISION**

It is the decision of the State Hearing Officer to **Uphold** the Respondent's decision to deny the Appellant's October 24, 2019 application for Emergency Assistance –Shelter.

ENTERED this 29<sup>th</sup> day of October 2019.

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**Tara B. Thompson**  
State Hearing Officer