



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

Bill J. Crouch  
Cabinet Secretary

Board of Review  
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Jolynn Marra  
Inspector General

October 7, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 22-BOR-1916

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 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, MLS  
State Hearing Officer  
State Board of Review

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

CC: Kelly O'Bright, [REDACTED] DHHR

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

██████████,

**Appellant,**

v.

**ACTION NO.: 22-BOR-1916**

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on August 30, 2022 on an appeal filed with the Board of Review on August 2, 2022.

The matter before the Hearing Officer arises from the Respondent's June 27, 2022 decision to deny the Appellant eligibility for West Virginia School Clothing Allowance (SCA) program.

At the hearing, the Respondent appeared by Kelly O'Bright, ██████████ DHHR. The Appellant appeared *pro se*. All witnesses were sworn in and the following exhibits were entered as evidence.

**Department's Exhibits:**

D-1 DHHR Notice, dated June 27, 2022

D-2 West Virginia Income Maintenance Manual (WVIMM) § 19.4

**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) The Appellant is the custodial parent of Child [REDACTED]
- 2) Child [REDACTED] is a member of the Appellant's Supplemental Nutrition Assistance Program and Medicaid Assistance Groups (AG).
- 3) The Appellant has received West Virginia (WV) School Clothing Allowance (SCA) Program benefits for Child [REDACTED] in previous benefit years.
- 4) On June 27, 2022, the Respondent denied the Appellant eligibility to receive WV SCA for Child [REDACTED] because she is already receiving the assistance (Exhibit D-1).
- 5) Child [REDACTED] visits her mother on the weekends.
- 6) The Respondent included Child [REDACTED] in her mother's WV WORKS AG (Exhibit D-1).
- 7) The Respondent issued WV WORKS SCA to Child [REDACTED] mother on Child [REDACTED] behalf.

## APPLICABLE POLICY

**West Virginia Income Maintenance Manual (WVIMM) §§ 2.2.2, 19.4.2, and 3.4.1.A provide in pertinent parts:**

Eligibility Groups for WV WORKS School Clothing Allowance (SCA) and West Virginia SCA (WV SCA) are the same as for WV WORKS. There is a restriction on the amount of time an Assistance Group (AG) member can be out of the home and still be included in the benefit. See Chapter 3.

The following individuals must be included in the AG:

In cases of joint custody, only the custodial parent is included. The custodial parent is the one with whom the child lives more than 50% of the time in a given month. The custodial parent of any child may change from month to month. If the child lives with each parent exactly 50% of the time, the parents must decide who the custodial parent is.

**WVIMM § 19.4.11.A provides in pertinent part:**

When a Hearings Officer rules in a Fair Hearing that the SCA or WVSCA denial was inappropriate, the Worker must issue the benefit to the applicant.

**WVIMM §§ 19.4.9 and 10.4.10 and Division of Family Assistance Deskguide (June 2022) provide in pertinent parts:**

Procedures regarding issuing benefits not issued due to an incorrect birth date or relationship code can be found in the SCA Desk Guide issued for the current program year.

When SCA or WVSCA is received in error, it is subject to repayment according to the WV WORKS repayment policy. If the Worker learns, for example, that a child is no longer in the home, the overpayment of SCA or WVSCA must be repaid.

If benefits are not issued to a client due to an incorrect relationship code, a Worker must determine if the incorrect individual will make the benefits available to the child. If the benefits will be made available to the children, no further action is needed. Thorough case comments must be completed in both cases.

If the benefits will not be made available to the child and the primary person will not sign an IG-IFM-BENPAY-1 or give verbal permission for the benefits to be removed, then the incorrect case must be referred to repayments ....

**DISCUSSION**

The Respondent denied the Appellant eligibility for WV SCA for Child [REDACTED]. The Respondent argued that the SCA denial was correct because another individual received Child [REDACTED] SCA benefit because she is a member of the other individual's WV WORKS case. The Appellant argued that the other individual should not have received Child [REDACTED] WV SCA benefit because Child [REDACTED] is a historic member of his household and he has received her WV SCA benefit in all previous years. The Respondent argued that because Child [REDACTED] was allotted SCA in another Assistance Group (AG), the Appellant was correctly denied eligibility for WV SCA benefits for Child [REDACTED].

The Respondent bears the burden of proof. The Respondent had to prove by a preponderance of the evidence that Child [REDACTED] was ineligible for WV SCA because SCA was correctly issued to Child [REDACTED] in another AG.

Pursuant to the policy, Child [REDACTED] should not have been included in another individual's WV WORKS AG. The policy stipulates that the custodial parent is the one with whom the child lives more than 50% of the time in a month. The Appellant testified that Child [REDACTED] was only in the other individual's home on weekends. The Respondent did not enter any evidence to refute that Child [REDACTED] has historically resided in his household more than 50% of the time in a month. The Respondent incorrectly issued Child [REDACTED] SCA as a member of another individual's WV WORKS AG.

Pursuant to the policy, when SCA is received in error, it is subject to repayment. The Respondent should have acted by seeking repayment for SCA benefits issued to an incorrect individual on behalf of Child [REDACTED].

## Reversal

The preponderance of evidence established the Respondent incorrectly issued WV WORKS SCA to an incorrect individual on behalf of Child [REDACTED]. The Appellant testified that the incorrect individual "wasted" SCA benefits issued on Child [REDACTED] behalf. The Respondent did not submit evidence to verify that the SCA benefits issued to the incorrect individual were made available to Child [REDACTED]. Because the preponderance of evidence failed to prove that Child [REDACTED] correctly received SCA benefits in another individual's WV WORKS AG, this Hearing Officer cannot affirm that the Appellant was appropriately denied eligibility for WV SCA benefits for Child [REDACTED]. Pursuant to the policy, when a Hearing Officer rules a denial was inappropriate, the Worker must issue the benefit to the applicant.

## Remand

Pursuant to the policy, when the Respondent does not issue WV WORKS SCA benefits due to an incorrect relationship code, the Respondent's Worker has the responsibility to consult the deskguide. The deskguide provides that the Respondent's Worker must determine whether the incorrect individual will make the SCA benefits available to the child. The preponderance of evidence did not clarify whether issuing WV WORKS SCA to an incorrect person was caused by a relationship code error.

The policy deskguide instructs the Respondent to complete a process if SCA benefits are not made available to Child [REDACTED]. No evidence was entered to verify that the Respondent completed the process to make SCA benefits available to Child [REDACTED]. The Respondent must determine whether the incorrect individual has made or is willing to make SCA benefits available Child [REDACTED]. If SCA benefits are made available to Child [REDACTED], the policy stipulates that no further action is needed. However, the policy deskguide stipulates that if benefits are not made available to the child, the primary person will not sign an IG-IFM-BENPAY-1 or give verbal permission for the benefits to be removed, then the matter must be referred to repayments. Pursuant to the policy deskguide, if the incorrect person signs the IG-IFM-BENPAY-1 or gives verbal permission for removal of those benefits, then the Respondent must complete an eligibility override in the Appellant's case and issue SCA benefits to the Appellant.

Because sufficient information was not provided to verify that the Appellant considered the relationship code or completed the subsequent required actions, the matter must be remanded for review.

## **CONCLUSIONS OF LAW**

- 1) WV WORKS SCA benefits were issued on behalf of Child [REDACTED] to an incorrect person.

- 2) The Respondent must determine whether the incorrect person will make the issued SCA benefits available to Child [REDACTED]
- 3) The preponderance of evidence failed to prove that SCA benefits were made available to Child [REDACTED]
- 4) The Respondent incorrectly denied the Appellant WV SCA for Child [REDACTED]

### DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant eligibility for WV SCA for Child [REDACTED]. The matter is **REMANDED** to determine whether the issued SCA benefits were made available to Child [REDACTED]. If issued SCA benefits were not made available to Child [REDACTED] and the Appellant is otherwise eligible, it is hereby ordered that WV SCA benefits be issued to the Appellant for Child [REDACTED].

ENTERED this 7<sup>th</sup> day of October 2022.

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**Tara B. Thompson, MLS**  
State Hearing Officer