



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 19, 2006

Dear Ms. _____

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 3, 2006. Your hearing request was based on the Department of Health and Human Resources' decision to establish a Cash Assistance claim and Food Stamp claim against your household. You indicated at the hearing that you had no objection to the Food Stamp claim so therefore; that request will be treated as a withdrawal.

In arriving at a decision, the State Hearings 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 Cash Assistance, WV Works, is based on current policy and regulations. Some of these regulations state as follows: When an assistance group has been issued more Cash Assistance than it was entitled to receive, corrective action is taken by establishing a claim. Collection action is initiated against the Assistance Group which received the overpayment. All child support must be redirected, unless only a DCA payment is received. A sanction is not imposed by having the client repay all or part of the benefit he has already received. (West Virginia Income Maintenance Manual 20.3, 15.3, 13.9C).

The information, which was submitted at your hearing, revealed that you were receiving cash benefits from the WV Works program for children whom you were also receiving child support for. The child support was not redirected, as policy requires.

It is the decision of the State Hearing Officer to uphold the action of the Department to establish and collect a Cash Assistance claim however; the claim amount is to be modified.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Crossland, DHHR

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

_____,
Claimant,

v.

Action Number: 06-BOR-2135

**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 October 3, 2006 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 October 3, 2006 on a timely appeal, filed June 5, 2006.

It should be noted here that repayment and recoupment have been postponed pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled WV Works is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

WV Works was created by Senate Bill 140, Article 9 of the West Virginia Code and the Temporary Assistance to needy Families Block Grant, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The purpose of WV Works is to provide assistance to needy families with children so they can be cared for in their own home, reduce dependency by promoting job preparation, work and marriage. The goals of WV Works are to achieve more efficient and effective use of public assistance funds, reduce dependence on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

_____, claimant

Karen Crossland, DHHR Repayment Investigator

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Agency was correct in their actions to establish and collect an overpayment of WV Works, cash assistance.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy § 10.24, 13.9, 15.3 and 20.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Cash Assistance Claim Determination
- D-2 Food Stamp Claim Determination
- D-3 Memo from Child Support Enforcement
- D-4 West Virginia Income Maintenance Manual Policy § 10.24
- D-5 West Virginia Income Maintenance Manual Policy § 13.9
- D-6 WV Works – Personal Responsibility Contract
- D-7 West Virginia Income Maintenance Manual Policy § 20.3
- D-8 Notification letter dated May 30, 2006 for Cash Assistance claim
- D-9 Notification letter dated May 30, 2006 for Food Stamp claim
- D-10 Case comments from application date September 12, 2002

VII. FINDINGS OF FACT:

- 1) The claimant applied for cash assistance on September 12, 2002. At this application, the claimant reported that she receives \$50. in child support monthly (Exhibit D-10). She signed a Personal Responsibility Contract (Exhibit D-6) that included a statement that says in part: I understand any child support received by me or my children must be sent to the WV DHHR Bureau for Child Support Enforcement (BCSE) immediately upon receipt. If I fail to redirect these payments, I understand I will be sanctioned.
- 2) The claimant testified that the caseworker who took her application had not told her that she had to send her child support in. She states that the worker told her that the \$50. would not count against her check.

- 3) The claimant continued to receive child support payments of \$50. per month in October 2002 thru April 2003 and she did not redirect this child support to BCSE. The claimant did not have an appointment with the BCSE staff during this time period and was not advised by BCSE to redirect these payments.
- 4) The claimant received a grant amount of \$453. each of the months October 2002 thru April 2003. A total of \$3171. for the seven month period. She received \$350. child support for the seven-month period.
- 5) The Family Support Specialist did not initiate a sanction process for the non redirected child support, during the months in question. The case was referred to the Claims and Collection unit for repayment.
- 6) The Repayment Investigator calculated the cash assistance claim by imposing a 1/3 sanction for the first month of over payment, a 2/3 sanction for the 2nd month of overpayment and determined total ineligibility for the remainder of the seven month claim. A claim amount of \$2,767. was calculated due to the \$350. of unredirected child support.
- 7) **WV Income Maintenance Manual § 10.24:**
When received ineligibly, the CSI is subject to repayment. Received ineligibly includes, but is not limited to, the client failed to report income and received a WV Works benefit ineligibly.
- 8) **WV Income Maintenance Manual § 13.9A:**
Sanctions are applied to WV WORKS cases in the form of check reductions and, for the 3rd or subsequent offense, termination of benefits. The amount of the check reduction is a fixed amount and is determined as follows:
1st Offense = 1/3 reduction in the check amount, prior to recoupment, that the AG is currently eligible to receive, for 3 months
2nd Offense = 2/3 reduction in the check amount, prior to recoupment, that the AG is currently eligible to receive, for 3 months. If the case is in a 1/3 reduction when the 2nd sanction is applied, the 2/3 reduction is applied to the check amount the client is currently eligible to receive, prior to recoupment; it is not applied to the check amount which has already been reduced by 1/3.
3rd Offense = Ineligibility for cash assistance for 3 or until compliance, whichever is later.
All benefit reductions due to imposition of a sanction require advance notice. Unless the client shows good cause for non-compliance, the sanction is imposed.
- 9) **WV Income Maintenance Manual § 13.9B:**
When an additional offense for the same or a different requirement occurs during a sanction period, the next level of sanction is imposed, after proper notification. The client must also be given the opportunity to establish good cause, regardless of the length of time remaining for the sanction that is already in effect.
- 10) **WV Income Maintenance Manual § 13.9C:**
The sanction period begins the month after expiration of the advance notice period. A sanction is not imposed by having the client repay all or part of the benefit he has

already received. A reduced check amount for three months or termination of cash assistance for at least 3 months is the only means by which a sanction is imposed. After the 2nd sanction has been imposed, the Worker must make a home visit. When the 3rd sanction occurs prior to the home visit, the imposition of the 3rd sanction must be delayed until the home visit is completed.

11) **WV Income Maintenance Manual § 20.3**

Repayment is pursued for cash assistance overpayments made under the WV WORKS program. When an AG has received more cash assistance than it was entitled to receive, corrective action is taken by establishing a claim for the overpayment.

12) **WV Income Maintenance Manual § 15.3**

REDIRECTION OF CHILD SUPPORT PAYMENTS (WV WORKS)

All child support payments made on behalf of children who are recipients of WV WORKS must be redirected to Bureau for Child Support Enforcement (BCSE). The client must forward the payment to BCSE. Failure to do so will result in application of a sanction for WV WORKS for failure to cooperate with child support activities.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in Chapter 15.3 that child support received on behalf of children who are recipients of cash assistance must be redirected to BCSE.
- 2) Policy in Chapter 20.3 allows a claim to be established when an overpayment of cash assistance was received.
- 3) Policy in Chapter 13.9 A & B is clear that before a sanction can be imposed, the client must be given advanced notice and must be given the opportunity to establish good cause for his or her non-compliance.
- 4) Policy in Chapter 13.9 C states that a sanction is not imposed by having the client repay all or part of the benefit he has already received. A reduced check amount for three months or termination of cash assistance for at least 3 months is the only means by which a sanction is imposed.
After the 2nd sanction has been imposed, the Worker must make a home visit. When the 3rd sanction occurs prior to the home visit, the imposition of the 3rd sanction must be delayed until the home visit is completed.
- 5) It is clear that the Repayment Investigator does not have the ability after the fact to apply sanctions to a cash assistance case. There is no means available to provide advanced notice to give the client the opportunity to establish good cause. There is no means available to make the mandatory home visit prior to imposition of a 3rd sanction.
- 6) The claimant did receive benefits she was not eligible to receive, in the amount of the \$350. child support, which she failed to redirect. It is reasonable to believe that this failure to redirect was due to a misunderstanding by the claimant and by the failure of the Department to immediately follow through with a scheduled appointment with BCSE. If given the opportunity, this claimant may have proven good cause.

IX. DECISION:

It is the decision of this Hearing Officer that the claimant did receive an overpayment of Cash Benefits of \$350 due to the child support income retained by her. I rule that the Department calculated an inaccurate overpayment amount of \$2767. by incorrect application of sanctions. I further rule that the Department modify their calculations to reflect an overpayment amount of \$350. I **uphold** the Department in their pursuit of repayment for this modified cash assistance overpayment.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of October, 2006.

Sharon K. Yoho
State Hearing Officer