



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
200 Davis Street  
Princeton, WV 24740

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 26, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 11, 2006. Your hearing request was based on the Department of Health and Human Resources' decision to establish a Cash Assistance claim against your household.

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: **BEGINNING OF THE SANCTION PERIOD:** 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. Imposition of a sanction may be delayed by a Fair Hearing request. When the Department is upheld, the sanction begins in the month following the Fair Hearing Decision. If the decision is reached after the RAPIDS deadline date, the sanction begins 2 months after the decision. (WV Income Maintenance Manual Chapter 13.9, C.)

The information, which was submitted at your hearing, revealed that although the Department's decision to apply a 3<sup>rd</sup> sanction to your case was correct, the timeframe applied was erroneous.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to establish and collect a WV Works Cash Assistance claim for the months of January and February 2006.

Sincerely,

Cheryl McKinney  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Brian Shreve, [REDACTED] DHHR

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

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**Claimant,**

**v.**

**Action Number: 06 – BOR - 2693**

**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 September 11, 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 September 11, 2006 on a timely appeal, filed August 15, 2006.

It should be noted here that repayment has 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

Brian Shreve, DHHR Repayment Investigator

Presiding at the Hearing was Cheryl McKinney, 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 § 13.9, C, and 20.3

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

- D-1 Case Comments dated 12-16-05 through 12-23-05
- D-2 Copies of Rapids screens AIPR last updated 2-14-06 and 01-03-06
- D-3 Case comments dated 12-30-05 through 1-03-06
- D-4 Copy of DFA-FH-1 signed by Claimant 12-29-05
- D-5 Case Comments dated 2-14-06
- D-6 Copy of ES-CU-5 – Cash Assistance Claim Determination and Rapids Screens
- D-7 Copy of original Hearing Decision on Departments action to apply sanction to Claimant's case.
- D-8 Case Comments dated 3-23-06 through 3-28-06
- D-9 Copy of email from Hearing Officer Woods dated 3-23-06
- D-10 Copy of corrected Hearing Decision on Departments action to apply sanction
- D-11 Copy of WV Income Maintenance Manual section 20.3
- D-12 Copy of notification letter to claimant dated 5-22-06

#### **Claimant Exhibits:**

None submitted

### **VII. FINDINGS OF FACT:**

- 1) During the month of December 2005, the claimant was receiving WV Works Cash Assistance benefits in the amount of \$460.00 monthly. The WV Works caseworker applied a 3<sup>rd</sup> sanction to claimant's case effective January 2006, as he/she determined claimant had failed to cooperate by providing certain documents verifying he was

actively pursuing available resources. The claimant requested a hearing on the Department's action 12-29-06 and requested that his benefits continue until receipt of a hearing decision.

- 2) The Claimant received a WV Works check during the months of January and February 2006 in the amount of \$460.00 monthly. (D-6)
- 3) A hearing was held on February 10, 2006 on the issue of whether the Department acted correctly in their determination that a 3<sup>rd</sup> sanction was applicable to claimant's case. The Department was subsequently "upheld" in their decision to apply the sanction. (D-7)
- 4) Testimony from the Department indicated they received the Hearing Decision on February 14, 2006 (D-5) and then determined the sanction period was to have been from January 2006 through March 2006. The Department took action to apply a sanction to Claimant's case for the month of March 2006 only. The Department determined the claimant was ineligible (D-6) and therefore overpaid WV Works Cash Assistance for the months of January and February 2006, in the amount of \$920.00. A letter was sent to Claimant to notify him of this determination on May 22, 2006. The letter notified Claimant the overpayment was due to "client error" and was caused by "benefits continued through hearing". (D-12)
- 5) Testimony from the Claimant indicated he felt he should not owe the repayment because an error was made on the previous hearing decision. He testified that on some of the pages of the hearing decision his name was listed incorrectly. Document (D-7) shows that on page (4) of the Hearing Decision his name was entered as "Mr. \_\_\_\_\_", and then a corrected decision was issued (D-10).
- 6) The Claimant testified that he felt "forced" into filing for his disability by his caseworker. He testified that he felt he was only temporarily incapacitated and not disabled. Claimant testified that he felt his caseworker did nothing to help his family, and refused to see their needs. Claimant also testified that he has been involved with PC's since 1983, and recently opened an in-home PC Repair business.
- 7) **WV Income Maintenance Manual § 20.3 states in part:**  
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. The claim is the difference between the amount of benefits received and the amount of benefits to which the AG was entitled.
- 8) **WV Income Maintenance Manual § 13.9, C states in part:**  
**BEGINNING OF THE SANCTION PERIOD:** The sanction period begins the month after the 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. Imposition of a sanction may be delayed by a Fair Hearing request. When the Department is upheld, the sanction begins in the month following the Fair Hearing decision. If the decision is reached after the RAPIDS deadline date, the sanction begins 2 months after the decision.

### **VIII. CONCLUSIONS OF LAW:**

- 1) A Hearing Decision issued on February 10, 2006 determined the claimant failed to comply with the terms of his Personal Responsibility Contract. The decision was to uphold the Department's proposed action to apply a 3<sup>rd</sup> sanction to claimant's case.
- 2) Although a technical error was made in the original Hearing Decision issued February 10, 2006, the decision was clear and complete, and the name was subsequently corrected. The error is not relevant to this hearing issue, and is not being considered.
- 3) Claimant's testimony about his relationship with his caseworker, and his feelings about her unwillingness to help his family are regrettable, but are not relative to this Hearing issue, and therefore are not being considered in arriving at a decision.
- 4) The Department's action to impose a sanction for the month of March 2006 only, and establish an overpayment cash assistance claim for the months of January and February 2006, is in violation of WV Income Maintenance Policy Chapter 13.9, C., which states in part: 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. Imposition of a sanction may be delayed by a Fair Hearing request. When the Department is upheld, the sanction begins in the month following the Fair Hearing Decision. If the decision is reached after the RAPIDS deadline date, the sanction begins 2 months after the decision.

### **IX. DECISION:**

It is the decision of this Hearing Officer that the Department used the wrong time frame in the application of the 3<sup>rd</sup> sanction, and therefore incorrectly established a Cash Assistance claim for the months of January and February 2006. I **reverse** the Agency in their determination to establish a Cash Assistance claim for the months of January and February 2006 in the amount of \$920.00.

### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 26th Day of September, 2006**

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**Cheryl McKinney  
State Hearing Officer**