



**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**

July 23, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 19, 2007. 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: 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 claims, whether established as a result of an error on the part of the Agency or the household, are subject to recoupment. (West Virginia Income Maintenance Manual ' 10.4, C & 20.2)..

The information, which was submitted at your hearing, revealed that your daughter moved into your home and actions were not taken to discontinue your receipt of Cash Assistance for her children and reassess for her eligibility of Cash Assistance.

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 is to be established as an Agency error claim at a reduced amount.

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: 07-BOR-1287

**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 July 19, 2007 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 July 19, 2007 on a timely appeal, filed May 4, 2007.

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 § 1.2, 6.3, 2.17 and 20.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Cash Assistance Claim Determination
- D-2 West Virginia Income Maintenance Manual Policy § 1.2
- D-3 West Virginia Income Maintenance Manual Policy § 2.2
- D-4 West Virginia Income Maintenance Manual Policy § 20.3
- D-5 Notice of Cash Assistance overpayment dated April 30, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant's three grandchildren had been residing with her under her care in excess of one year when she applied for Cash Assistance to assist in their care. She had been given temporary legal custody of her grandchildren by the court system through action taken by the Department's Child Protective Service (CPS) department. A CPS caseworker recommended that she apply for Cash Assistance.
- 2) The Claimant was receiving \$340. monthly Cash Assistance for the children in February, 2007 when the CPS staff contacted her to advise her that her daughter, mother of the children, was to be released from incarceration and planned to move in with her.
- 3) On February 6, 2007, the Mother of the children moved in to the home with the Claimant and the children. The Claimant did not call the WV Works staff to report that her daughter had moved in to the home. She states that she felt that the Department had already reported to her that her daughter was moving in so she did not feel that it was necessary to call the Department to report that she had moved in.

- 4) The daughter did not immediately find employment. She did find part time employment soon after she entered the home, but her employer did not regularly pay her for her work.
- 5) In early April 2007, the courts returned legal custody to the Claimant's daughter. The daughter moved with her children from the home in June.
- 6) On April 26, 2007, the WV Works staff became aware that the mother of the children had been in the home since February 6, 2007 and referred the case to the Claims and Collection unit. A \$1020. claim for March, April and May benefits has been established.
- 7) **WV Income Maintenance Manual § 1.2:**
Client Responsibility
The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.
- 8) **WV Income Maintenance Manual § 6.3:**
Situations Requiring Advance Notice
A client must receive advance notice in all situations involving adverse actions. The advance notice requirement is that notification be mailed to the client at least 13 days prior to the first day of the month in which the benefits are affected.
- 9) **WV Income Maintenance Manual § 2.17:**
For WV WORKS case, all changes in a client's circumstances must be reported immediately. In addition, new earned income must be reported within 10 days of the date new employment begins. The agency must act on reported changes to be effective with the next month's benefit, when advance notice requirements permit.
Change In The AG – Additions: Additions to the AG are effective the month the change occurs provided the individual is otherwise eligible. An individual who is added to an existing AG is treated as an applicant. Benefits for the individual are prorated from the date that all eligibility requirements are met, including signing the Personal Responsibility Contract, (PRC) and attending orientation.
B. Living with a specified relative- The child must be living with a specified relative in a place established as the relative's home.
Note: Legal custody or guardianship of a child does not, in itself, qualify a person as a specified relative.
- 10) **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.

When a client fails to report changes timely according to Section 2.17, B, and the change would have decreased benefits, a claim is established.

1. Agency Errors: The first month of overpayment is the month the change would have been effective had the agency acted properly.

2. When the client fails to provide accurate or complete information, the first month of the overpayment is the month the incorrect, incomplete information would have affected the benefit level, considering reporting and noticing requirements.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in Chapter 2.17 that the claimant had an obligation to report to the Department when her daughter moved in to the home. In this situation, the Department's CPS unit had reported to the claimant that her daughter was coming to live with her but clearly did not notify the WV Works unit of this. It is therefore understandable that this claimant might not realize the need to contact the WV Works unit. Once the mother of the children moved in to the home the case with the claimant as payee, should have been closed and eligibility determined based on the circumstances surrounding the mother. Orientation would need to be attended and a PRC signed.
- 2) Policy in Chapter 2.17 also specifies that 10 days be permitted for reporting changes. The claimant's daughter moved in on February 6, 2007 so the claimant was obligated to report this by February 16, 2007.
- 3) Policy 6.3 is clear that any adverse action to be taken against an assistance group requires 13 days advance notice prior to the first day the benefits are to be affected. Giving the claimant the full 10 days to report the change would cause the Department to become aware of the change on the 16th of February, which would not allow 13 days for advanced notice to affect March benefits. The advanced notice would have needed to be mailed no later than the 15th of February. Therefore, based on policy 20.3, March should not be considered as the first month of overpayment.
- 4) The CPS staff as well as the claimant is at fault for not reporting to the WV Works staff that the mother of the children moved in to the home. The overpayment is a combination Agency Unintentional Error and Client Unintentional Error. The Department was directly involved in the placement of the children in the home, arranging for legal custody, recommending that the claimant apply for Cash Benefits and notifying her that the daughter was moving in. The claim must be established as either an Agency Error claim or Client Error claim and evidence and testimony lend itself more strongly to the overpayment being the result of CPS failing to communicate the change to the WV Works staff..

IX. DECISION:

It is the decision of this Hearing Officer that the claimant did receive Cash Benefits of \$680. which should not have been issued to her in April and May. I rule to **uphold** Agency in the establishment of a claim and the pursuit of payment from the claimant. I rule that the claim be established as an Agency error claim in the amount of \$680.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd Day of July 2007.

Sharon K. Yoho
State Hearing Officer