



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 10, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 2, 2007. Your hearing request was based on the Department of Health and Human Resources' action to require repayment of WV Works assistance check in the amount of \$2358.

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 the WV Works assistance check Program is based on current policy and regulations. Some of these regulations state as follows: 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 (WV Income Maintenance Manual Section 20.3).

The information which was submitted at your hearing revealed that an overpayment of WV Works cash assistance in the amount of \$2358 occurred during the period of May 1, 2005 through January, 2006 due to client error.

It is the decision of the State Hearings Officer to uphold the action of the Department to require repayment of WV Works assistance check in the amount of \$2358.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

_____,

Claimant,

v.

Action Number: 07-BOR-2009

**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 2, 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 October 2, 2007 on a timely appeal, filed August 27, 2007.

It should be noted here that repayment is 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:

1. _____, Claimant.
2. _____, Claimant's son.
3. Brian Shreve, Repayment Investigator.

Presiding at the Hearing was Thomas M. Smith, 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 Department took the correct action to establish a repayment claim of \$2358 for WV Works assistance check for the period of May, 2005 through January, 2006.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Sections 1.24, 1.25, 2.17, 9.21, 20.3.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of case comments 12-13-05 (2 pages).
- D-2 Copy of application for LIEAP Program 12-5-05 (2 pages).
- D-3 Copy of Cash Assistance Claim Determination (6 pages).
- D-4 Copy of WV Income Maintenance Manual Section 9.21 (4 pages).
- D-5 Copy of case comments 8-23-05 & 12-13-05.
- D-6 Copy of letter dated 8-23-07.

CI-1 Copy of custody signed by _____.

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient of WV Works cash assistance when a caseworker was clearing a regular LIEAP application received on 12-9-05 (Exhibits #D-1 and #D-2) and discovered that the claimant reported her son, _____, living in the home. Mr. _____ was the father of the child for which the claimant was receiving the cash assistance.
- 2) The WV Works caseworker phoned the claimant's residence and Mr. _____ answered the phone and freely admitted that he had been in the home since March, 2005. The claimant called the caseworker that same day and did not dispute that her son had been in the home since March, 2005 and informed the caseworker that she had custody of the child and did not think that her son living in the home made any difference.
- 3) The WV Works caseworker closed the case effective 1-31-06 and referred the case for repayment and possible prosecution. In June, 2007, the Criminal Investigative Unit

determined not to prosecute and referred the case to the Repayment Investigator who established an overpayment claim in the amount of \$2358 for the period of May, 2005 through January, 2006 (Exhibit #D-3).

- 4) The Repayment Investigator testified that WV Maintenance Manual Section 9.21 A.1 states that the parent of a child must be included unless he/she falls in categories listed in item 3 which Mr. _____ does not and that WV Income Maintenance Manual Section 9.21 A.2 states that caretaker relatives who are not natural or adoptive parents may choose to be included or excluded but that Mr. _____ is a parent who cannot be excluded.
- 5) The Repayment Investigator testified that on 8-23-05, the claimant completed a WV Works review and did not report that Mr. _____ was living in the home (Exhibit #D-5) and the overpayment was considered a client error.
- 6) Notification of the repayment claim was sent to the claimant on 8-23-07 (Exhibit #D-6).
- 7) The claimant testified that when she applied, all she wanted was a medical card and she was told she could receive the check, that custody was awarded to her in August, 2004, that her son was in jail and had Crohn's disease when he got out, that the money was used for the child, and that she felt like she was entitled to the money for the child.
- 8) Mr. _____ testified that he was incarcerated and signed over temporary custody until August, 2005, that he got out of jail in March, 2005, that he did not think to come in and report it, that his mother gave him the EBT card and she did not think to tell the Department, that he came in within two (2) weeks to change it when he found out, that the money went to his daughter, that he was receiving SSI at the time, that he was in and out of his mother's home from March through August, 2005, that prior to August, 2005, he spent 2/3 of his time with his fiancée in [REDACTED] and about 1/3 of the time with his mother.
- 9) WV Income Maintenance Manual Section 20.1 states, in part:

"20.1 INTRODUCTION

"The Department is responsible for accurately determining the client's eligibility for Food Stamps, the former AFDC/U program, WV WORKS, CSI, the former TANF program, WV WORKS school clothing allowance, West Virginia school clothing allowance and Medicaid. When it is discovered that excess benefits have been issued, corrective action must be taken."

11. WV Income Maintenance Manual Section 20.3 states, in part:

"Repayment is pursued for cash assistance overpayments made under the former AFDC/U Program, WV WORKS, CSI, the former TANF Program, WV WORKS School Clothing Allowance, and the West Virginia School Clothing Allowance.

EXCEPTION: DCA and EA overpayments are not subject to repayment, unless fraud is established.

The establishment, notification and collection of cash assistance claims are the responsibility of the Claims and Collections Unit, IFM.

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. The policy by which cash assistance claims are referred, established, collected and maintained follows.

NOTE: Referrals must be made for all overpayments, regardless of the dollar amount. However, IFM does not write claims for under \$100 unless there is a liable debtor approved for cash assistance at the time the claim is processed. Claims under \$100 are written and collected by check reduction. See Item F below. Once the claim is established, there are no hardship provisions or exceptions which delay, suspend or terminate efforts to collect the claim.

A. REFERRAL PROCESS

Upon discovery of a potential cash assistance claim, the Worker refers the case to the RI by completion of the BVRF screen in RAPIDS.

NOTE: If either of the following conditions exist, see the fraud referral process in Section 20.6:

- The amount of the cash assistance due to client misrepresentation is greater than \$500; or
- The cash assistance overpayment in combination with other overissued benefits from other programs due to client misrepresentation is greater than \$500;.....

E. COLLECTING THE CLAIM

1. Collection Priority

Collections can be made on only one claim at a time. Claims are collected according to the following priority order.

- Fraud
- Client error
- Agency error.....

The following persons are equally liable for the total amount of overpayment and are liable debtors.

- Adult or emancipated minors in the AG
- Disqualified individuals who would otherwise be required to be included.
- Caretaker relatives who signed the application/redetermination at the time of overpayment.

- An unreported adult who would have been required to be in the AG had he been reported.
- Sponsors of alien Ags when the sponsor is responsible for the overpayment.

When the AG composition changes, collection is pursued against any and all AG's which include a liable debtor.....

2. Claim Notification

a. Client and Agency Claims

The AG is notified of the cash assistance claim by computer-generated notification/demand payment letters from RAPIDS. Enclosed with the letter is a repayment agreement, form ES-REPAY-1, and a postage-paid envelope.....

F. DETERMINING THE REPAYMENT AMOUNT

1. Active Recipients

The monthly repayment amount is 10% of the AG's total gross, non-excluded earned and unearned income, including the actual WV WORKS check amount, which may include reductions and incentives described in Section 10.24 or sanctions described in Section 13.9 and the Child Support Incentive. The amount is determined as follows:

- If the AG has no income other than the WV WORKS check, the repayment amount is determined by multiplying the check amount, after application of any reductions, incentives, or sanctions by 10% and dropping the cents.
- If the AG has income other than the WV WORKS check, the repayment amount is determined as follows:

Step 1: Add together:

- The non-excluded gross earned income of the income group, with no deductions applied
- All non-excluded unearned income of the income group
- The actual WV WORKS check amount, including the Child Support Incentive

Step 2: Determine 10% of the amount in Step 1 and drop the cents.

This is the monthly repayment amount. When the amount determined in Step 2 is less than the WV WORKS check amount, the monthly recoupment amount is equal to the amount calculated in Step 2. When the amount determined in Step 2 is greater than or equal to the WV WORKS check amount from Step 1, the monthly recoupment amount is equal to the WV WORKS check amount less \$1. The client may voluntarily repay at a higher rate, but the Department may not require repayment at a higher or lower rate than that specified above. repayment purposes only, cash assistance is defined as

payments made under the former AFDC/U Program, WV Works, TANF, Emergency Assistance, and School Clothing Allowance.....

2. Former Recipients

Liabe debtors are responsible for payment of all claims regardless of case status. Form ES-REPAY-1 offers the client the following options to repay when there is no liable debtor.

a. Lump Sum Payment

One payment is made to pay the claim in its entirety.

b. Installment Payments

When the AG is financially unable to pay the claim in one lump sum, regular monthly installment payments are accepted. The minimum amount of the monthly payment is \$50. If the CI/RI determines that the AG cannot afford the minimum payment, the payment amount is negotiated on a case-by-case basis."

10) WV Income Maintenance Manual Section 2.17 B, 1 states, in part:

"1. All changes in income, assets, household composition and other circumstances must be reported.....

2. Timely Reporting

For WV WORKS case, all changes in a client's circumstances must be reported immediately."

VIII. CONCLUSIONS OF LAW:

- 1) WV Income Maintenance Manual Section 2.17 B, 1 states that all changes in income, assets, household composition and other circumstances must be reported. Section B, 2 states that all changes in a client's circumstances must be reported immediately. In this case, the claimant failed to immediately report a change in household composition which had a direct bearing on the eligibility of the case.
- 2) WV Income Maintenance Manual Section 20.3 states that repayment is pursued for cash assistance under the WV Works Program when an AG has received more cash assistance than it was entitled to receive. The claimant received WV Works cash assistance from May, 2005 through January, 2006 while the father of the child for which she was receiving the benefits was living in the home. The claimant failed to report the required information and the Department was unable to correctly determine eligibility. Therefore, the Department was correct to establish an overpayment claim for the period of May, 2005 through January, 2006 in the amount of \$2358.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to require repayment of WV Works cash assistance in the amount of \$2358 for the period of May, 2005, through January, 2006.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of October, 2007.

**Thomas M. Smith
State Hearing Officer**