



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 5, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 14, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to establish a agency error WV WORKS cash assistance claim against your household in the amount of one thousand nine hundred twenty dollars (\$1920.00).

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 that for WV WORKS cases, all changes in a client's circumstances must be reported immediately. (WV Income Maintenance Manual Section 2.17.B.2.) Retirement, Survivors, Disability Insurance (RSDI) is counted as unearned income for the WV WORKS cash assistance program. (WV Income Maintenance Manual Section 10.3.RRR) 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 you began receiving Retirement, Survivors, Disability Insurance (RSDI) income from the Social Security Administration on behalf of your granddaughter in March 2008. This income was not reported or considered in the eligibility process until January 2009, resulting in an overpayment.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to establish and collect a WV WORKS cash assistance claim for the months of April 2008 through January 2009 in the amount of one thousand nine hundred twenty dollars (\$1920.00).

Sincerely,

Cheryl Henson
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**

-----,

Claimant,

v.

Action Number: 09 – BOR - 1258

**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 28, 2009 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 14, 2009 on a timely appeal, filed May 21, 2009.

II. PROGRAM PURPOSE:

WV WORKS

The purpose of WV WORKS is to help economically dependent, at-risk families become self-supporting. It is a work-oriented, performance-based, time-limited Program that emphasizes employment and personal responsibility. The goals of WV WORKS are to achieve more efficient and effective use of public assistance funds, reduce dependency on public programs by promoting self-sufficiency, and structure assistance to emphasize employment and personal responsibility.

III. PARTICIPANTS:

-----, Claimant

Brian Shreve, DHHR Repayment Investigator
Crystal Sutphin, Department witness #1
Sandra Lorrison, Department witness #2

Presiding at the Hearing was Cheryl Henson, 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 claim in the amount of one thousand nine hundred twenty dollars (\$1920.00).

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy § 2.17.b.2, 20.3, and 10.3RRR

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Comments for period December 2007 and January 2008
- D-2 Case Comments for January 10, 2008
- D-3 Case Comments for February 3, 2009
- D-4 WV Income Maintenance Manual Section 2.17
- D-5 WV Income Maintenance Manual Section 10.3RRR
- D-6 WV State Online Query dated June 11, 2009
- D-7 Cash Assistance Claim Determination form dated May 11, 2009 and accompanying forms
- D-8 WV Income Maintenance Manual Section 20.3
- D-9 Notification letter dated May 12, 2009
- D-10 Rights and Responsibilities Form signed December 27, 2007

Claimant Exhibits:

- C-1 Letter from Social Security Administration dated July 15, 2009
- C-2 Notice from Social Security Administration dated January 15, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant began receiving WV WORKS cash assistance (D-1) as a caretaker relative in December 2007. As a caretaker relative she elected to receive a check for her granddaughter alone and in doing so the Department was able to exclude the Claimant and her income and assets from consideration in the eligibility process.
- 2) The Claimant reported (D-2) at application that her granddaughter was eligible for a Retirement, Survivors, Disability Insurance (RSDI) check from the Social Security Administration; however, the check was being sent to the child's mother in another

state. The Department instructed the Claimant to apply with the Social Security Administration to be the payee for this child's benefits. The Department never checked with the Claimant to determine if she began receiving this benefit.

- 3) The Claimant reports that she applied to be payee for the child's benefits (C-2) on January 15, 2008, and began receiving a check in the amount of one hundred ninety two dollars (\$192.00) for her granddaughter from the Social Security Administration in March 2008. The exact date of receipt in March 2008 has not been shown.
- 4) The Claimant reported the income at the next redetermination interview (D-3) with the Department which was conducted in January 2009.
- 5) The Department determined (D-7) that an agency error overpayment of WV WORKS cash assistance had occurred as a result of this income not being counted for the period of April 2008 through February 2009. The Department contends that the Claimant was required by policy to report the income immediately; however, they are considering this a agency error because the Department also failed to follow up on the case to determine if the Claimant applied to become the payee for the child's Social Security benefits.

6) **WV Income Maintenance Manual § 2.17.B.2 states in pertinent part:**

Timely Reporting

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 to avoid certain penalties.

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 § 10.3.RRR states in part:**

Income

Source of Income

RRR. RSDI (Retirement, Survivors, Disability Insurance

Program of Assistance

WV WORKS

Unearned. Count the amount of the client's entitlement. This includes any amount deducted for Medicare, if applicable.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in that for WV WORKS Cash Assistance, the Claimant is obligated to report changes immediately. Policy is also clear in that RSDI income from the Social Security Administration is considered unearned income for WV WORKS cash assistance and must be considered in determining eligibility and payment amount.
- 2) Policy dictates that 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 amount of the claim is the difference between the amount of benefits received and the amount the AG was entitled to receive.
- 3) The evidence shows the Claimant began receiving the RSDI income in the amount of one hundred ninety two dollars (\$192.00) for her granddaughter in March 2008 but did not report the income until January 2009. The income is considered unearned income for the WV WORKS program and does affect the amount of WV WORKS cash assistance the AG is eligible to receive. The income was not considered in the eligibility process from April 2008 through January 2009; therefore, an overpayment occurred.
- 4) The Department is correct in its determination that an Agency Error Overpayment occurred in the amount of one thousand nine hundred twenty dollars (\$1920.00) for the period of April 2008 through January 2009.

IX. DECISION:

It is the decision of this Hearing Officer that the Department was correct in their establishment of a WV WORKS Cash Assistance Claim in the amount of one thousand nine hundred twenty dollars (\$1920.00) for the period of April 2008 through January 2009. The Department is **upheld** in the establishment of this claim.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of August, 2009

**Cheryl Henson
State Hearing Officer**