



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

April 29, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 22, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to establish a WV Works Cash Assistance claim against your household in the amount of \$1204.00.

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. Timely Reporting – For WV Works – when a dependent child, included in a WV Works payment, will be absent from the home for a period of 30 consecutive calendar days or more, the parent or other caretaker must notify the Department by the end of the 5th calendar day after the date it becomes clear to the parent/caretaker that the child will be absent for at least 30 days. (WV Income Maintenance Manual Section 2.17.B.2.) 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 were receiving WV Works Cash Assistance for your two nephews on or about August 21, 2008 when the Department, after a court hearing, returned the children to their parent's custody. You continued to receive WV Works Cash Assistance for them until January 31, 2009 when the case was closed. The Department erred in continuing your eligibility after September 30, 2008.

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 October 2008 through January 2009 in the amount of \$1204.00.

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 - 954

**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 April 22, 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 April 22, 2009 on a timely appeal, filed March 19, 2009.

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
-----, Claimant's wife

Brian Shreve, DHHR Repayment Investigator
Brenda C. Headen, WV Works Caseworker

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 in the amount of \$1204.00.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy § 2.17.b.2, 2.17.D.3, and 20.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Comments dated December 29, 2008
- D-2 Client Contact Report created March 30, 2009
- D-3 Cash Assistance Claim Determination and accompanying forms
- D-4 WV Income Maintenance Manual Section 15.2.B
- D-5 WV Income Maintenance Manual Section 2.17.B
- D-6 WV Income Maintenance Manual Section 2.17.D.3
- D-7 WV Income Maintenance Manual Section 2.17.A
- D-8 WV Income Maintenance Manual Section 20.3
- D-9 Notification of overpayment dated March 17, 2009

Claimant Exhibits:

- C-1 Department's Written Summary

VII. FINDINGS OF FACT:

- 1) During the month of August 2008 the Claimant was actively receiving WV Works Cash Assistance benefits in the amount of \$301.00 monthly for his two nephews. The case was considered a "Caretaker Relative" case, and the Claimant and his wife were not included in the benefits.

- 2) On August 14, 2008 a court hearing was held which resulted in a decision to return the Claimant's two nephews to their biological parents' custody. The Department presented evidence (D-2) to show that they, specifically the Department's Child Protective Services Unit, were aware of this decision and were involved in the transport of the children and the transfer of custody. The transfer of custody occurred somewhere between August 14, 2008 and August 21, 2008. (D-2)
- 3) The Department claims their WV Works Cash Assistance Unit was not notified by either the Claimant or the Child Protective Services Unit of this change at the time it occurred. The Department contends the WV Works Cash Assistance Unit became aware of this change on December 29, 2008 (D-1) when their Bureau for Child Support Enforcement Unit reported it.
- 4) The Department contends that, as a result, the Claimant was overpaid WV Works Cash Assistance from October 2008 through January 2009 in the amount of \$1204.00. Since the children were not in the Claimant's custody he was not eligible for the payments. The Department has determined this to be an "Agency Error", since one of the Department's Units was aware of the change and obligated to notify the WV Works Cash Assistance Unit.
- 5) The Claimant contends that he did call and report the change to the WV Works Cash Assistance Unit and was told by the worker that things would remain the same until it was determined the children would remain with their biological parents permanently. The Claimant states as a result of this information, he then spent the cash assistance on the children. He states he purchased items they needed and does not believe he should be required to repay the money.
- 6) **WV Income Maintenance Manual § 2.17.D.3 states in pertinent part:**

Change In the AG: Deletions: Deletions from the AG are effective the month after the change occurs and the advance notice period expires. Repayment is sought for any overpayment that occurs.
- 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 § 2.17.B.2 states in part:**

REPORTING REQUIREMENTS

Timely Reporting

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

When a dependent child, included in a WV WORKS payment, will be absent from the home for a period of 30 consecutive calendar days or more, the parent or other caretaker must notify the Department by the end of the 5th calendar day after the date it becomes clear to the parent/caretaker that the child will be absent for at least 30 days.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in that for WV Works Cash Assistance, the Claimant is obligated to report the change immediately. There is some question as to whether that occurred. However, the Department, through its Child Protective Services Unit, was completely aware of the change and obligated to follow up on the information. They failed to do so. Policy also stipulates that when an assistance group has received more cash assistance than it was entitled to receive, corrective action is to be taken to establish a claim for overpayment.
- 2) It is clear that an over-issuance has occurred. Although the Claimant reportedly spent the over- issued cash assistance for items the children needed, policy is clear that "any" over-issuance must be repaid.
- 3) The Department is correct in its determination that an Agency Error Overpayment occurred in the amount of \$1204.00 for the period of October 2008 through 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 \$1204.00 for the period of October 2008 through January 2009. I **uphold** the Department 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 29th Day of April, 2009

**Cheryl Henson
State Hearing Officer**