



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

February 24, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 2, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to establish and seek collection of a WV WORKS cash assistance repayment claim against your household.

In arriving at a decision, the State Hearing 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 through the WV WORKS Program is based on current policy and regulations. Some of these regulations state that when an AG (Assistance Group) 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 {West Virginia Income Maintenance Manual §20.3}

Information submitted at your hearing confirms that you were not eligible to receive cash assistance during the period November 2008 through October 2009, resulting in a \$4,256 overpayment.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to establish and seek collection of a WV WORKS cash assistance repayment claim in the amount of \$4,256.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Sally Musick, Repayment Investigator (RI), WVDHHR

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

-----,

Respondent,

v.

Action Number: 09-BOR-2389

**West Virginia Department of
Health and Human Resources,**

Movant,

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on February 24, 2010 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 February 2, 2010 on a timely appeal filed December 14, 2009.

II. PROGRAM PURPOSE:

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:

-----, Respondent

Sally Musick, Repayment Investigator (RI), WVDHHR, Movant

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department is correct in its proposal to establish and seek collection of an overpayment of WV WORKS cash assistance from the Respondent.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 9.21 & Chapter 20

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Combined Application and Review Form (CAF) and Rights and Responsibilities (DFA-RR-1)
- D-2 Joint Parenting Agreement dated 10/14/98
- D-3 WV Income Maintenance Manual, Chapter 9.21,A,1
- D-4 Letter NCHM dated 9/16/09
- D-5 Case Comments dated 9/28/09
- D-6 WV Income Maintenance Manual, Chapter 20.3
- D-7 WV Income Maintenance Manual, Chapter 20.3,B
- D-8 WV Income Maintenance Manual, Chapter 20.3,C
- D-9 WV Income Maintenance Manual, Chapter 20.2,C
- D-10 Cash Assistance Claimant Determination (ES-C/U-5) dated 10/5/09

VII. FINDINGS OF FACT:

- 1) On or about October 6, 2009, the Claimant was notified of a \$4,256 cash assistance overpayment that occurred during the period November 1, 2008 through October 31, 2009. This notice indicates that the overpayment occurred due to an agency error caused by a budget group error.
- 2) The Department contends that the Respondent was initially approved for cash assistance through the WV WORKS Program in December 2007 (D-1), however, it was discovered in September 2009 that she shares joint custody of her two sons with their father. The Joint Parenting Agreement (D-2) confirms that the Respondent and the children's father share custody equally (50%). The Department contends that as a condition of eligibility, policy states the parents must decide which parent is the custodial parent when the child/children live with each parent exactly 50% of the time.

- 3) The Respondent was provided an opportunity to verify she is the custodial parent in Exhibit D-4, which states in pertinent part:

Since joint custody exists you must provide a written statement from ----- indicating that you have the boys at least 51% of the time, which for our policies [sic] means you are the custodial parent.

This notice goes on to indicate that if the information was not made available to this office by 9/26/09, benefits would be stopped or decreased.

Page 2 of this notice states – “If ----- indicates that you have the boys at least 51% of the time and you continue to receive TANF for the boys then he will be incurring a debt to the State of WV that the State will attempt to have him pay.”

- 4) The Respondent testified that the children’s father refused to provide her a statement indicating she is the custodial parent. Furthermore, the Respondent affirmed that custody of her two children is shared exactly 50% with the children’s father – 3 days one week and 4 days the next.
- 5) Exhibit D-10, Cash Assistance Claim Determination, indicates the Respondent was not eligible for any cash assistance during the period November 2008 through October 2009, resulting in a loss to the program in the amount of \$4,256. The Department noted that while the Claimant has been a recipient of WV WORKS benefits since December 2007, pursuant to WVIMM, Chapter 20.2,C repayment due to an agency error can only be established retroactively for the one-year period preceding the date of discovery.
- 6) WV Income Maintenance Manual, Chapter 9.21,A,1 states that in cases of joint custody, only the custodial parent is included. The custodial parent is the one with whom the child(ren) lives more than 50% of the time in a given month. The custodial parent of any child may change from month to month. If the child lives with each parent exactly 50% of the time, the parents must decide which is the custodial parent.
- 7) West Virginia Income Maintenance Manual, Chapter 20.3 states that repayment is pursued for cash assistance overpayments made in the WV WORKS Program. Policy goes on to say 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.

VIII. CONCLUSIONS OF LAW:

- 1) As a condition of eligibility for WV WORKS, policy dictates that if the children live with each parent exactly 50% of the time, the parents must decide which is the custodial parent.

- 2) The evidence reveals that the Movant has joint custody of her children and that she was unable to secure confirmation from the children's father that she is the custodial parent. The Department erroneously approved eligibility for WV WORKS benefits and the Movant subsequently received \$4,256 in cash benefits during the period November 1, 2008 through October 31, 2009 to which she was not legally entitled.
- 3) Pursuant to repayment policy found in Chapter 20 of the West Virginia Income Maintenance Manual, when an assistance group has received more cash assistance than it was entitled to receive, corrective action is taken by establishing a claim for the overpayment. While policy goes on to state that the repayment claim is the difference between the amount received and the amount the assistance group was entitled to receive, repayment due to an agency error can only be established retroactively for the one-year period preceding the date of discovery. Based on the evidence, the Department's proposed repayment amount of \$4,256 is affirmed.

IX. DECISION:

After reviewing the evidence and the applicable policy and regulations, it is the decision of the State Hearing Officer to **uphold** the proposal of the Department to establish and seek collection of a WV WORKS cash assistance repayment claim in the amount of \$4,256.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of February, 2010.

Thomas E. Arnett
State Hearing Officer