



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704

Rocco S. Fucillo
Cabinet Secretary

October 22, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 27, 2012. Your hearing request was based on the Department of Health and Human Resources' establishment of a WV WORKS overpayment claim.

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 the WV WORKS program is based on current policy and regulations. Some of these regulations state that the parent of the children for whom the WV WORKS benefit is intended must be included in the WV WORKS assistance group when that parent lives with the children (West Virginia Income Maintenance Manual, Chapter 9.21.A.1), and that 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 (West Virginia Income Maintenance Manual, Chapter 20.3).

The information submitted at your hearing revealed that your son was present in your home while you were receiving WV WORKS benefits that, by policy, were required to be established contingent on the eligibility of your son. As a result, you received cash assistance benefits you were not entitled to receive and the Department's establishment of an overpayment claim is correct.

It is the decision of the State Hearing Officer to **uphold** the Department's establishment of a WV WORKS overpayment claim.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Cassandra Burns, Department Representative

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

IN RE: ----,

Respondent,

v.

ACTION NO.: 12-BOR-1888

**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 October 22, 2012, for ----. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This hearing was convened on September 27, 2012, on a timely appeal filed August 2, 2012.

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:

----, Claimant
Cassandra Burns, Department representative

Presiding at the hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

All persons offering testimony were placed under oath.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct to establish a WV WORKS overpayment claim against the Claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 9.21.A.1; Chapter 20.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Cash Assistance Claim Determination form and Benefit Recovery Referral screen print
- D-2 Notification letter dated July 12, 2012
- D-3 Case Comments screen prints, entry dates September 21, 2011, through April 6, 2012
- D-4 Case Comments screen prints, entry dates April 6, 2012, through April 12, 2012
- D-5 West Virginia Income Maintenance Manual, Chapter 9.21.A
- D-6 West Virginia Income Maintenance Manual, Chapter 20.3
- D-7 Court Order and Guardian Ad Litem Report in the Family Court of [REDACTED] County, West Virginia
- D-8 Court Order in the Family Court of [REDACTED] County, West Virginia
- D-9 West Virginia Department of Motor Vehicles Driver History Inquiry screen print
- D-10 Referral/Claim Comments screen prints, entry dates July 30, 2012 through August 3, 2012

Claimant's Exhibit:

- C-1 Letter from ----dated September 27, 2012

VII. FINDINGS OF FACT:

- 1) Cassandra Burns, a Repayment Investigator for the Investigations and Fraud Management (IFM) unit of the West Virginia Department of Health and Human Resources (Department), testified that the Department notified the Claimant (Exhibit D-2) on or about July 12, 2012, of a \$2493 cash assistance overpayment claim based on WV WORKS benefits paid for which the Claimant was not eligible. This notice states, in pertinent part:

We have determined that you were paid 2493.00 more cash benefits than you were eligible to receive during the period 09/23/11 to 04/30/12. This CLIENT ERROR claim was caused by BUDGET GROUP IN ERROR.

- 2) Ms. Burns presented documentation (Exhibit D-1) showing the itemized monthly calculation of this cash assistance claim. The form lists the benefits actually issued and the corrected benefit amounts, by month, then subtotals these amounts, and finally derives the \$2493 claim total as the difference between the issued subtotal and the corrected subtotal, next to the heading “Loss to Program.” The corrected amount for the entire claim period is zero, based on the Department’s contention that the Claimant’s household was totally ineligible for WV WORKS from September 2011 through April 2012.
- 3) Ms. Burns testified that the Claimant was not eligible to receive WV WORKS during the claim period because of the presence of the Claimant’s son – the parent of the children for whom WV WORKS were issued – in her household at that time.
- 4) The WV WORKS benefits issued to the Claimant for her grandchildren were provided through a program option known as the caretaker relative option, which requires, among other factors, the absence of the parents of the children.
- 5) In situations with a parent present, the approval of WV WORKS benefits must be determined based on the eligibility factors of that parent. The West Virginia Income Maintenance Manual, Chapter 9.21.A.1, lists those that must be included in the WV WORKS assistance group (AG). This policy states, in pertinent part (emphasis added):

9.21 WV WORKS ELIGIBILITY DETERMINATION GROUPS

A. THE ASSISTANCE GROUP (AG)

1. Who Must Be Included

NOTE: Whether or not an individual has earned or unearned income sufficient to meet his own needs or the needs of his dependents, is not a factor to consider when determining if the individual is required to be included in the AG.

NOTE: Although the individuals listed below are required to be included in the WV WORKS AG, if otherwise eligible, an SSI recipient, age 18 or over, cannot be included in the AG. See item 3 below.

The following individuals are required to be included:

- All minor, dependent, blood-related and adoptive siblings who live in the same household and are otherwise eligible. For this purpose only, otherwise eligible means living with a specified relative.

EXAMPLE: Two children who have the same mother but different fathers live with the paternal grandparents of child A. The children are blood-related and would normally be required to be included in the same

AG. However, the grandparents of child A are not specified relatives of child B. Therefore, child B is not eligible for WV WORKS.

- The parent(s) of the child(ren) identified above when the parent(s) lives with the child(ren), unless they fall under any of the categories of who may not be included listed in Item 3 of this section.

6) The Claimant testified that her son was in her home continuously from April 2011 through July 2011, and sporadically from July 2011 through April 2012. She testified that her son's girlfriend gave birth to their son on July 14, 2011, and this initiated the period of her son's less frequent presence in her home. She described this as him being "in and out" of her home, "staying the night" occasionally with his children in her home, but not eating or sleeping all nights at her home. She contended that "residing" means "there every night."

7) The Claimant presented a letter from her son (Exhibit C-1), which states, in pertinent part:

My mother ---- drewed [*sic*] a check for my children ----, ---- [and] ---- from August till [*sic*] April while I was absent from her house. At that time I was staying with my girlfreind [*sic*] in ---- helping her after she had my baby. I moved back in with her in April at that time I opened my own case.

8) A report (Exhibit D-7) of the Guardian Ad Litem (GAL) to the Family Court of [REDACTED] County, West Virginia, dated December 6, 2011, includes statements made by ----to the GAL prior to the establishment of a cash assistance overpayment claim. This report notes that "Mr. ---- stated that in March 2011 he got the children and he and the children moved in with his mother, [Claimant]." The GAL report additionally includes a conclusion that, based on Mr. ---- living with the Claimant at the time, "...the children are at risk for abuse or neglect while residing with Mr. ----." This report does not mention the current assertion of the Claimant and Mr. ---- that he was living with his girlfriend in ---- at the time.

9) The West Virginia Income Maintenance Manual, at Chapter 20.3, states, in pertinent 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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy requires the establishment of overpayment claims when a household receives more cash assistance – or WV WORKS – than that household was entitled to receive. Policy requires a WV WORKS household to be established around the eligibility factors of a parent, when that parent is present in the household. A household that received WV WORKS via a caretaker relative option for non-parents, would be ineligible for benefits received if the parent was present in the household.
- 2) The Department showed that the Claimant’s son – the parents of the children for whom the cash assistance benefits were intended – was present in the home during the overpayment claim period established by the Department. The Claimant reported that her son was present on an irregular basis during this claim period, but not frequently enough for her to consider him to be “residing” with her. A note from the Claimant’s son, written after the establishment of the overpayment claim, supports the Claimant’s contention that he was living with his girlfriend. However, the statement the Claimant’s son made to the GAL of the ██████ County Family Court, prior to the establishment of an overpayment claim, contradicts this. If the Claimant’s son was living with his girlfriend at that time, he had good reason to report this living arrangement to the GAL, but did not. In light of this, as well as the timing of these contradictory statements relative to the establishment of a cash assistance claim against the Claimant, weight is given to the statement made to the GAL that Mr. ---- was living with his mother, the Claimant.
- 3) Because the Claimant received \$2493 in WV WORKS benefits that should have been based on the application, eligibility factors, and work participation of the Claimant’s son, the Claimant was ineligible for these benefits and the Department was correct to establish an overpayment claim in this amount.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to establish a WV WORKS overpayment claim against the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of October, 2012.

**Todd Thornton
State Hearing Officer**