



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

February 27, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 22, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to pursue a repayment of WV WORKS benefits.

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. These regulations provide that an individual who receives federal, state or local foster care maintenance payments cannot be included in WV WORKS (WV Income Maintenance Manual § 9.21 A).

The information submitted at your hearing revealed that you were not eligible to receive WV WORKS in June 2011 and July 2011 and are required to repay those benefits.

It is the decision of the State Hearing Officer to **Uphold** the proposal of the Department to pursue a repayment of WV WORKS benefits against you.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Vickie Adkins, Repayment Investigator

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

IN RE: -----,

Respondent

v.

ACTION NO.: 11-BOR-2610

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Movants

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on February 22, 2012 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 a timely appeal, filed December 16, 2011.

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

Vickie Adkins, Repayment Investigator
Stephanie Lester, Child Protective Services Supervisor

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's proposal to pursue a repayment of WV WORKS benefits against Respondent is correct.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 9.21 A, 15.2 B and 20.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Benefit Recovery Referral Screen (BVRF) from RAPIDS Computer System
- D-2 Combined Application and Review Form dated October 28, 2010
- D-3 Rights and Responsibilities Form dated October 28, 2010
- D-4 Notification of Overpayment dated November 15, 2011
- D-5 Case Comments (CMCC) from RAPIDS Computer System
- D-6 WV Income Maintenance Manual § 9.21
- D-7 WV Income Maintenance Manual § 15.2
- D-8 WV Income Maintenance Manual § 20.3

VII. FINDINGS OF FACT:

- 1) Respondent applied for WV WORKS benefits as a caretaker relative for her two (2) great-grandchildren on October 28, 2010. Respondent was approved for WV WORKS for \$301 monthly effective November 2010 and ongoing (D-2 and D-5).
- 2) Respondent started receiving foster care payments of \$1200 monthly in March 2011 and ongoing for caring for her great-grandchildren. The Department contends Respondent was not eligible to receive WV WORKS benefits while receiving foster care payments. The result of the agency error was an overpayment of WV WORKS benefits of \$602 issued to Respondent in June 2011 and July 2011 (D-1 and D-4).
- 3) Stephanie Lester, Child Protective Services Supervisor, worked with Respondent's great-grandchildren when they were removed from their home and placed in the Department's custody. Ms. Lester admitted it was their error that Respondent received both foster care payments and WV WORKS during the same time period. Ms. Lester stated Respondent's WV WORKS benefits should have been deducted from the amount of foster care assistance she was receiving. Ms. Lester testified the foster care payments were issued to Respondent in lump sums, so she would not have known she was being overpaid.

4) Respondent testified she does not know Departmental policy and did not know she was receiving money that she should not have. Respondent stated she needed the assistance to help care for her great-grandchildren.

5) WV Income Maintenance Manual § 9.21 A(3) states:

Who Cannot Be Included [for WV WORKS]

The following situations result in ineligibility for the individual who meets at least one of the following criteria. However, when all members of the AG [assistance group] meet any of the criteria listed below, the entire case is ineligible.

- An individual who is a recipient of federal, state or local foster care maintenance payment

6) WV Income Maintenance Manual § 15.2 B states:

If the Department made an AFDC Foster Care payment, a WV WORKS payment cannot be initiated for the same period because this results in a duplication of payments.

7) WV Income Maintenance Manual § 20.3 states:

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 prohibits the simultaneous receipt of WV WORKS benefits and foster care payments.
- 2) Due to an agency error, Respondent was overpaid WV WORKS benefits during the time period she received foster care payments for care of her great-grandchildren. Respondent was not eligible to receive WV WORKS in June 2011 and July 2011 and is required to repay those benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to pursue a repayment of WV WORKS benefits against Respondent.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th day of February 2012

Kristi Logan
State Hearing Officer