



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

November 23, 2015



RE: [REDACTED] v. WV DHHR
ACTION NOS.: 15-BOR-3292 (SNAP Repayment)
15-BOR-3293 (WV WORKS Repayment)

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Brian Shreve, Repayment Investigator

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

██████████,

Appellant,

v.

**ACTION NOs.: 15-BOR-3292 (SNAP Repayment)
15-BOR-3293**

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

(WV WORKS Repayment)

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (WV DHHR) Common Chapters Manual. This fair hearing was convened on November 19, 2015, on an appeal filed October 19, 2015.

The matters before the Hearing Officer arise from the October 9, 2015 decision by the Respondent to establish repayment obligations against the Appellant's receipt of Supplemental Nutritional Assistance Program (SNAP) benefits and WV WORKS cash assistance.

At the hearing, the Respondent appeared by Representative Brian Shreve, Repayment Investigator. Appearing as a witness for the Respondent was Family Support Specialist Belinda Mitchell. The Appellant appeared *pro se*. All participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV DHHR Income Maintenance Manual (IMM), Chapter 9, §9.1.A.1(2)
- D-2 Employee Wage Data print-out regarding father of Appellant's child from WV Bureau of Employment Programs
- D-3 WV DHHR IMM, Chapter 20, §20.2
- D-4 Cash Assistance Claim Determination Form and Food Stamp (now SNAP) Claim Determination Form, along with supporting computer print-outs
- D-5 Letters from Department to Appellant dated October 9, 2015 – Notice of SNAP Overissuance and Notice of Cash Assistance and/or School Clothing Allowance Overpayment
- D-6 Letter from ██████████ County Housing and Redevelopment Authority, dated November 5, 2015

D-7 Case comments from Appellant's case record, from September 29 through October 13, 2015

Appellant's Exhibits:

- A-1 Written statement from [REDACTED], dated and notarized October 5, 2015
- A-2 Written statement from [REDACTED], dated October 2, 2015, and notarized October 5, 2015
- A-3 Written statement from [REDACTED], dated and notarized October 5, 2015

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Department established repayment obligations against the Appellant's receipt of SNAP benefits and WV WORKS cash assistance (Exhibit D-4). The Department made these findings based on information to the effect that the Appellant lived with the father, grandfather and grandmother of her daughter from February through September 2015, while reporting she and her daughter lived in their own home during this period of time.
- 2) The Repayment Investigator who investigated the Appellant's case determined that because the Appellant lived in the home of her child's daughter from February through September 2015, the father's earnings should have been counted against the assistance group's (AG's) receipt of SNAP and WV WORKS. Because this income was not counted, the Appellant's AG received \$1770 in SNAP benefits and \$374 in WV WORKS cash assistance to which it was not entitled.
- 3) The Appellant requested a fair hearing to protest the establishment of the SNAP and WV WORKS repayment obligations.

APPLICABLE POLICY

WV Income Maintenance Manual (IMM), Chapter 9, §9.1.A.1(2) reads as follows in part:

The following individuals who live together must be in the same AG, even if they do not purchase and prepare meals together:

- Spouses, individuals who are legally married to each other under provisions of state law or those moving to West Virginia from states that recognize their relationship as a legal marriage;
- Children under age 22, living with a parent.

The WV IMM Chapter 9, §9.21.A.1 reads as follows in part:

The following individuals are required to be included [in a WV WORKS assistance group]:

- 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.
- The parent(s) of the child(ren) identified above when the parent(s) lives with the child(ren).

The WV IMM Chapter 20, §20.2 reads, “When an AG [assistance group] has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or Intentional Program Violation (IPV) claim.”

The WV IMM Chapter 20, §20.3 reads, “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.”

DISCUSSION

The Appellant requested a fair hearing to address the establishment of SNAP and WV WORKS repayment obligations. She testified that she did not live with the father of her child during the months of February through September 2015.

The Department’s representative, the Repayment Investigator who investigated these allegations, testified that the father of the Appellant’s child lived with his father during the months of February through September 2015. He testified that the grandfather came to his office to see him over an unrelated matter and told him his son’s girlfriend and child had been living with him for “a few months.” He testified that after the grandfather departed, he determined that the Appellant had not reported living with her child’s father, so he established repayment claims against the Appellant’s receipt of SNAP benefits and WV WORKS cash assistance.

The Department’s representative did not provide any evidence to corroborate the statements he testified were given to him from the grandfather. There were no correspondences and/or bills with common mailing addresses, identification documents such as driver’s licenses with common mailing addresses, or interviews with neighbors that supported the Department’s position that the Appellant and her child’s father lived in the same home.

In October 2015, the Appellant provided three notarized statements to the effect that she did not live with her child’s father. These statements were notarized by a notary public in ████████ WV. The first (Exhibit A-1) was from a neighbor of the Appellant, who wrote, “[Appellant] is my neighbor and [her child’s father] does not live with [Appellant].” The second (Exhibit A-2) was

from her landlord, who wrote, “[Appellant] is currently renting a unit at [Appellant’s mailing address]. She and her daughter reside there in a one-bedroom mobile home. There is no one else living there with her.” The third (Exhibit A-3) was written by the grandfather, who wrote, “My son, [the child’s father], lives with me in my residence . . . His daughter [Appellant’s child] and [Appellant] do not and have not ever lived here. They live at [Appellant’s] residence at [Appellant’s mailing address].”

The Department’s witness, an Economic Service Worker at the ██████ County office of the WV DHHR, testified that she received the written statements in October 2015, and called each of the three individuals who had written them. She testified that she entered case recordings (Exhibit D-7) regarding these conversations. However, these recordings do not refute the written statements. The neighbor who had written Exhibit A-1 confirmed that the father did not live in the Appellant’s mobile home. The landlord and his wife confirmed that no one lived with the Appellant except her daughter. The recording concerning the telephone conversation with the grandfather indicates the grandfather thought the Appellant lived in another county in WV. When asked about the in-office conversation with the repayment investigator, the grandfather seemed to become uncomfortable and terminated the telephone call abruptly. Although this conversation may cause one to question the veracity of the grandfather’s written statement, it does not rise to the level of corroborative evidence.

Because the Department did not present corroborative evidence to support its position that the Appellant lived in the home of the father of her daughter from February through September 2015, the Department did not act correctly to establish repayment obligations against the Appellant’s receipt of SNAP benefits and WV WORKS cash assistance.

CONCLUSION OF LAW

The Department did not act correctly to establish repayment obligations against the Appellant’s receipt of SNAP benefits and WV WORKS cash assistance, based on WV Income Maintenance Manual Chapter 9, §§9.1.A.1(2) and 9.21.A1, and Chapter 20, §§20.2 and 20.3.

DECISION

It is the decision of the state Hearing Officer to **reverse** the Department’s decision to establish repayment obligations against the Appellant’s receipt of SNAP benefits and WV WORKS cash assistance.

ENTERED this 23rd Day of November 2015.

Stephen M. Baisden
State Hearing Officer