



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

March 8, 2017



RE: [REDACTED] v WV DHHR
BOR ACTION NO.: 17-BOR-1203

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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Christina Saunders, Repayment Investigator

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

██████████,

Appellant,

v.

Action No: 17-BOR-1203

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

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' Common Chapters Manual. This fair hearing convened on March 8, 2017, on an appeal filed February 2, 2017.

The matter before the Hearing Officer arises from the December 16, 2016, decision by the Respondent to establish a WV WORKS repayment claim against the Appellant in the amount of \$1572.00

At the hearing, the Respondent appeared by Christina Saunders, Repayment Investigator. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Cash Assistance Claim Determination form with corresponding computer screen prints
- D-2 Combined Application and Review Form (CAF) and Rights and Responsibilities (R&R), dated January 27, 2015
- D-3 West Virginia Income Maintenance Manual Policy §10.3
- D-4 West Virginia Income Maintenance Manual Policy §2.17
- D-5 West Virginia Income Maintenance Manual Policy §20.3

Appellant's Exhibits:

- A-1 Notification Letter from Social Security Administration, dated July 4, 2015

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, 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 Appellant was a recipient of WV WORKS cash assistance benefits.
- 2) The Appellant is a recipient of Supplemental Security Income (SSI), which is not counted as income for the WV WORKS program.
- 3) In 2015, the Appellant began receiving Retirement Survivors Disability Insurance (RSDI), which is counted as unearned income for the WV WORKS program. (D-1 and A-1)
- 4) On December 16, 2016, the Appellant was notified that she received more WV WORKS benefits than she was entitled to receive from May 1, 2015 through October 1, 2015, in the amount of \$1,572.
- 5) The Appellant did not notify the Department when she began receiving RSDI.

APPLICABLE POLICY

West Virginia Income Maintenance Manual §2.17 requires that for WV WORKS cases, all changes in a client's circumstances must be reported immediately.

West Virginia Income Maintenance Manual §10.3 provides a list of income sources and indicates if the source of income is counted for each program. Supplemental Security Income (SSI) payments are not counted as income when determining eligibility for WV WORKS. Retirement Survivors Disability Insurance (RSDI) income is counted as unearned income for WV WORKS. The total amount of the client's entitlement, which includes any amount deducted for Medicaid is counted.

West Virginia Income Maintenance Manual §20.3 reads when an assistance group (AG) has been issued more cash assistance benefits than it was entitled to receive, corrective action is taken by establishing a claim for the repayment. The claim is the difference between the amount of benefits received and the amount the AG was entitled to receive. When the client fails to provide accurate or complete information, the first month of the overpayment is the month the incorrect, incomplete, or unreported information would have affected the benefit level, considering reporting and noticing requirements.

West Virginia Income Maintenance Manual §6.3 indicates a client must receive advance notice in situations involving adverse actions. The advance notice requirement is that notification be mailed to the client at least 13 days prior to the first day of the month in which benefits are affected.

DISCUSSION

The Appellant requested a fair hearing due to the Department's decision to establish a WV WORKS cash assistance repayment claim for the time period of May 1, 2015 through October 1, 2015, in the amount of \$1,572. The Appellant was notified that the reason for the claim was due to unearned income.

The West Virginia Income Maintenance Manual explains that when an assistance group (AG) has been issued more cash assistance than it was entitled, corrective action must be taken by establishing a repayment claim.

The Appellant stated that she did not understand how an overpayment occurred due to unearned income, because her unearned income amount did not change. She testified that the source of income changed from SSI to RSDI but not the amount received. The Appellant provided a letter that she received from the Social Security Administration which notified her that her SSI amount would decrease effective August 1, 2015, due to an increase in RSDI income. The Appellant stated the RSDI started on August 1, 2015.

The Department's representative, Christina Saunders, agreed with the Appellant on the Appellant's unearned income amount. Ms. Saunders testified that the type of unearned income received by the Appellant was the cause of the overpayment. She stated when the Appellant received SSI as the only source of unearned income, the Appellant was eligible for WV WORKS, because SSI is not counted when determining eligibility for that program. Once the Appellant started to receive RSDI, which is counted for the WV WORKS program, the Appellant became ineligible. Ms. Saunders stated that her records indicated the Appellant started to receive initial RSDI payments in April 2015, and received an increase in RSDI in May 2015.

Both the Appellant and Ms. Saunders agreed on the unearned income source and amount. Policy indicates that SSI income is excluded for the WV WORKS program, but RSDI income is counted. The Appellant's letter from the Social Security Administration addresses the change in income amounts, but it does not specifically state the Appellant began receiving RSDI on August 1, 2015. Based on evidence and testimony, an exact start date for the Appellant's RSDI payments cannot be determined.

CONCLUSIONS OF LAW

- 1) Per policy, when an AG receives more cash assistance than it is entitled, a repayment claim is established.
- 2) SSI income is excluded for the WV WORKS program, but RSDI income is counted.

- 3) Once the Appellant started to receive RSDI payments, she became ineligible for WV WORKS benefits.
- 4) Because it was not clear when the Appellant started to receive RSDI payments, the overpayment period and amount could not be determined.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision that the Appellant was ineligible for WV WORKS once she began receiving RSDI payments, but to **remand** the matter to the Department for further evaluation of the Appellant's RSDI start date to determine the correct overpayment period and amount. Following the re-evaluation, the Department shall notify the Appellant of its decision, which shall include the right to a Fair Hearing.

ENTERED this 8th day of March 2017.

**Natasha Jemerison
State Hearing Officer**