



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

April 19, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1526

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Christine Allen, [REDACTED] County DHHR

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

[REDACTED]

Appellant,

v.

Action Number: 17-BOR-1526

**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 [REDACTED]. 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 was convened on April 18, 2017, on an appeal filed March 23, 2017.

The matter before the Hearing Officer arises from the March 6, 2017 decision by the Respondent to establish a repayment claim of WV WORKS benefits against the Appellant.

At the hearing, the Respondent appeared by Christine Allen, Repayment Investigator. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was [REDACTED] the Appellant's daughter. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Request Notification
- D-2 Department Summary
- D-3 Benefit Recovery Referral Screen Print
- D-4 WV WORKS Issuance History-Disbursement Screen Print
- D-5 Notice of Decision dated August 11, 2016
- D-6 Cash Assistance Claim Determination
- D-7 Notice of Overpayment dated March 6, 2017
- D-8 Hearing Request received March 23, 2017
- D-9 Rights and Responsibilities Form dated February 6, 2017
- D-10 Referral/Claim Comments for March 2017
- D-11 Establish Claim Screen Print

- D-12 Second Amended Modification Order of the [REDACTED] County, West Virginia, Family Court dated August 2, 2016
- D-13 Narrative Screen Print from Bureau for Child Support Enforcement dated January 30, 2017
- D-14 West Virginia Income Maintenance Manual §9.21(A)
- D-15 West Virginia Income Maintenance Manual §2.17(B)
- D-16 West Virginia Income Maintenance Manual §20.3

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 for herself and her daughter, [REDACTED] from April 2016 through February 2017 (Exhibit D-4).
- 2) On or around February 1, 2017, the Respondent received a Second Amended Modification Order of the [REDACTED] West Virginia, Family Court dated August 2, 2016 (Exhibit D-12).
- 3) According to the Order, the Appellant and her ex-husband were awarded shared parenting of their daughter, with [REDACTED] spending six (6) consecutive days and nights with the Appellant, and spending eight (8) consecutive days and nights with her father.
- 4) Based on this Order, WV WORKS benefits for the Appellant were terminated effective March 1, 2017.
- 5) The Respondent established a repayment claim of WV WORKS cash assistance against the Appellant for benefits issued from September 2016 through February 2017 in the amount of \$1,806.
- 6) The Appellant contested the establishment of the repayment claim.

APPLICABLE POLICY

West Virginia Income Maintenance Manual §9.21(A)(1) states that in cases of joint custody, only the custodial parent is included in the WV WORKS benefit. 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.

West Virginia Income Maintenance Manual §20.3 states 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.

Repayment claims are classified as:

Agency Errors

- Failure to Take Prompt Action - The first month of overpayment is the month the change would have been effective had the agency acted properly.
- Computation Error - The first month of overpayment is the month the incorrect payment was effective.

Client Errors

- 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.

Fraud Claims

- Any claim established as a result of an investigation conducted by the Criminal Investigation Unit and subsequent court order is classified as a fraud claim.

DISCUSSION

Policy stipulates that when an Assistance Group receives more WV WORKS cash assistance than it is entitled to receive, a claim is established to recoup the overpayment.

The Appellant contended that she was named primary residential parent by the Family Court of ██████ County, and therefore is the custodial parent of ██████. The Appellant testified that she reported the shared parenting agreement to her caseworker when she applied for WV WORKS benefits, and should not be responsible for an overpayment that was not her fault.

Although the Appellant was named primary residential parent, policy defines the custodial parent as the parent with whom the child resides more than 50% of the time, which is not the Appellant. The Order awards ██████ father more time, eight consecutive days to the Appellant's six consecutive days, with ██████ and therefore making ██████ father the custodial parent.

Regardless if the claim is determined to be agency error or client error, all overpayments of WV WORKS benefits must be repaid. The Appellant was not eligible to receive WV WORKS benefits from September 2016 through February 2017, and pursuant to policy, must be repaid.

CONCLUSIONS OF LAW

- 1) Policy stipulates that when an Assistance Group receives more WV WORKS cash assistance than it is entitled to receive, a claim is established to recoup the overpayment.
- 2) The Appellant is not the custodial parent of ██████ as defined by policy, and was ineligible to receive WV WORKS benefits from September 2016 through February 2017.

- 3) The Respondent was correct in the establishment of a WV WORKS repayment claim against the Appellant.

DECISION

It is the decision of the State Hearing Officer to **uphold** the establishment of a WV WORKS cash assistance repayment claim against the Appellant.

ENTERED this 19th day of April 2017

**Kristi Logan
State Hearing Officer**