



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
Berkeley County DHHR  
PO Box 1247  
Martinsburg, WV 25402

Bill J. Crouch  
Cabinet Secretary

Jolynn Marra  
Interim Inspector General

December 15, 2020

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 20-BOR-2357

Dear [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,

Lori Woodward, J.D.  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Jessica Koch, BCF, [REDACTED] DHHR

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

██████████,

**Appellant,**

**v.**

**ACTION NO: 20-BOR-2357**

**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 was convened on November 18, 2020, on an appeal filed October 13, 2020.

The matter before the Hearing Officer arises from the Respondent's September 4, 2020 decision to deny the Appellant's Indigent Burial Program (IBP) application.

At the hearing, the Respondent appeared by Jessica Koch, Economic Service Supervisor. The Appellant appeared *pro se*. The witnesses were sworn, and the following documents were admitted into evidence:

**Department's Exhibits:**

- D-1 Denial notice dated September 4, 2020
- D-2 West Virginia Income Maintenance Manual, Chapter 20, §20.3 (excerpt)
- D-3 West Virginia Income Maintenance Manual, Chapter 4, §4.3.1 (excerpt)
- D-4 West Virginia Income Maintenance Manual, Chapter 4, §4.3 (excerpt)
- D-5 West Virginia Income Maintenance Manual, Chapter 4, Appendix A

**Appellant's Exhibits:**

- A-1 ██████████ Account Statement, August 20, 2020 – September 18, 2020
- A-2 ██████████ Debit, Reclamations Gov't Pymt Soc Sec, dated September 10, 2020
- A-3 Appraisement of the Estate For Decedents Dying on or After July 13, 2001
- A-4 West Virginia Department of Health and Human Resources Burial Billing Form, dated August 28, 2020

A-5 Visa Credit Card Receipts of payment to [REDACTED] dated August 28, 2020 for \$1,200 and September 6, 2020 for \$1,000

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's mother died on August 27, 2020. (Exhibit A-3)
- 2) The Appellant applied for the Indigent Burial Program (IBP) benefits on behalf of her mother on August 28, 2020. (Exhibit D-1)
- 3) On September 4, 2020, the Respondent sent notice of denial for IBP benefits based upon the deceased's gross income 30-days prior to her date of death exceeded 133% FPL. (Exhibit D-1)
- 4) The Appellant who arranged for burial service. (Exhibit A-4)
- 5) The Appellant is considered a responsible relative whose income must be verified for determination of IBP eligibility.

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual (WV IMM), Chapter 20, §20.3.2.B, explains, in part, the income limit for the deceased must not have been more than 133% of the FPL. **The income verification would just be for the deceased if the applicant is not a responsible relative.** The income counted would be for the 30 days prior to the date of death. The SNAP budgeting rules would be followed for counting the deceased's income. [Emphasis added]

WV IMM, Chapter 20, §20.3.3.A, states that although it is preferable that the application for payment of burial expenses be made by the surviving spouse or other close relative, the application may be made by the person who has accepted responsibility for making burial arrangements. This includes, but is not limited to, the Funeral Home Director, friends, and neighbors. All applicants must be at least the age of 18.

- Form DFA-BU-1, Application for Burial Benefits, will be used in taking applications for payment of burial expenses.
- Form DFA-BU-2, Affidavit of Responsible Relative, is used to determine whether certain relatives, who are designated under State Law as liable for burial expenses, are financially able to make payment of all or part of the maximum payment allowed by the Department. In order to maintain the Department's policy of developing all possible resources, other

relatives who are not designated under State Law as liable for burial expenses are also evaluated as to their ability and willingness to pay all or part of the appropriate burial rate.

WV IMM, Chapter 20, §20.3.2.C.1, states a responsible relative is a relative who is liable for the burial costs of the deceased, i.e., spouse, children, parents or siblings. **If the applicant is a responsible relative then the worker must check their readily available liquid assets such as, but not limited to cash, checking, savings, proof of income.** [Emphasis added]

WV IMM, Chapter 20, §20.3.2.D, states the income limit for the indigent burial program is 133% of the federal poverty level (FPL). This would be the income limit of the responsible relative. The household size and income would include all individuals that reside in the same household as the responsible relative. The deceased and their income would not be included in this. There is no asset test for the responsible relative.

WV IMM, Chapter 20, §20.3.3.C, *Responsible Relative*, states that a responsible relative is a relative who is liable for the burial costs of the deceased, i.e., spouse, children, parents, or siblings. If the applicant is a responsible relative, then the Worker must verify their income.

WV IMM, Chapter 20, §20.3.4.D, in part, states that the income of the responsible relative must be verified. The income limit is 133% of the FPL. The needs group and income group would consist of the responsible relative and those living with the responsible relative, at the time of application. The most recent 30 days of income would be counted starting with the date of application. The budgeting rules would follow SNAP Policy. The applicant has 3 days to provide income verification or the application will be denied if income is not verified within that time. **The income of the deceased is not counted.** [Emphasis added]

## DISCUSSION

On August 28, 2020, the Appellant applied for the Indigent Burial Program (IBP) on behalf of her mother, [REDACTED]. The Respondent's worker determined that because the deceased's mother received RSDI of \$1,646 monthly income 30 days prior to her death, she was over 133% FPL for program eligibility. Notice of the denial was sent to the Appellant on September 4, 2020.

Policy stipulates that if the applicant is not a responsible relative, then the income and asset verification would just be for the deceased. That is, if someone other than a policy-defined responsible relative makes application for IBP benefits, then the deceased's assets and income are considered. However, policy stipulates that if the applicant for the IBP is a responsible relative, then the Respondent must determine if the responsible relative applicant is financially eligible for program benefits. The income of the responsible relative and all those in the household must be verified. The income limit is 133% of the FPL and does not include the income of the deceased.

Whereas the applicant is considered a responsible relative by policy, the Respondent was required to verify and consider the Appellant's income for program eligibility. There was no evidence to show that the Appellant's financial eligibility for IBP benefits was considered by the Respondent.

### **CONCLUSIONS OF LAW**

- 1) If an applicant for IBP benefits is a policy-defined responsible relative, then policy requires that a determination of financial eligibility of the responsible relative for program benefits without the inclusion of the deceased's income.
- 2) Policy specifically includes children of a deceased person as a responsible relative.
- 3) The Appellant's application for IBP benefits on behalf of her deceased mother was denied based upon consideration of her mother's income only.
- 4) Because the Respondent was required to consider the financial eligibility of the Appellant and her household members, it incorrectly denied IBP benefits based on the deceased's income.

### **DECISION**

It is the decision of the State Hearing Officer to **reverse** the Respondent's decision to deny the Appellant's IBP application. The case is **remanded** to determine the financial eligibility of the Appellant as stipulated in policy.

**ENTERED this 15<sup>th</sup> day of December 2020.**

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Lori Woodward, Certified State Hearing Officer