



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary**

**Christopher G. Nelson
Interim Inspector General**

August 10, 2023

[REDACTED]

Re: [REDACTED] v WV DHHR
ACTION NO.: 23-BOR-2182

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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Rebecca Skeens, WV DHHR, [REDACTED]

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

[REDACTED],
Appellant,

v.

Action Number: 23-BOR-2182

**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 August 08, 2023, on an appeal filed July 20, 2023.

The matter before the Hearing Officer arises from the decision by the Respondent to deny the Appellant's application for Low-Income Household Water Assistance Program (LIHWAP).

At the hearing, the Respondent appeared by Rebecca Skeens, Economic Service Worker. Appearing as witnesses for the Department were Lavetta Casto, Economic Service Supervisor, Lynette Stewart, Program Manager, and Cherie Walls, Income Maintenance Supervisor. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Application for LIHWAP, dated May 15, 2023; and Copy of West Virginia American Water (WVAW) termination notice
- D-2 WV PATH eligibility system printout of Case Comments, dated February 28, 2023 through July 11, 2023; and Notice of Authorization of Payment dated May 15, 2023
- D-3 Notice of Decision, dated May 16, 2023
- D-4 WV PATH eligibility system printout of Case Comments, dated July 11, 2023 through July 25, 2023
- D-5 Notice of Decision, dated July 20, 2023
- D-6 West Virginia Income Maintenance Manual (WVIMM) §§ 21.8 through 21.8.2.A

Appellant's Exhibits:

None

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 applied for LIHWAP benefits for home water and sewage costs for herself on May 15, 2023. (Exhibit D-1)
- 2) On the May 15, 2023 LIHWAP application, the Appellant reported her address as [REDACTED]. (Exhibit D-1)
- 3) The Appellant reported an unearned income in the amount of \$1,047 for herself on the May 15, 2023 LIHWAP application. (Exhibit D-1)
- 4) The Appellant did not report any other household residents on the May 15, 2023 LIHWAP application. (Exhibit D-1)
- 5) Included with the Appellant's May 15, 2023 LIHWAP application, was a WVAW final termination notice issued to: [REDACTED] (Exhibit D-1)
- 6) The Appellant signed the Signature and Statements of Liability portion of the May 15, 2023 LIHWAP application, certifying that all answers and information provided are correct to the best of her knowledge. (Exhibit D-1)
- 7) On May 16, 2023, the Respondent issued a notice advising the Appellant that her application for LIHWAP benefits was approved with a benefit payment amount of \$333.09 paid to WVAW, beginning May 15, 2023. (Exhibit D-3)
- 8) On July 11, 2023, the Respondent received an additional application for LIHWAP benefits for home water and sewage costs for [REDACTED].
- 9) On July 20, 2023, the Respondent issued a notice advising the Appellant that her application for LIHWAP benefits was denied, due to having already received this assistance type in the same federal fiscal year. (Exhibit D-5)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) § 21.8 provides, in part:

The Low-Income Household Water Assistance Program (LIHWAP) provides financial assistance to eligible assistance groups (AG) responsible for water/wastewater cost. It is not the purpose of this program to meet the entire cost of household water/wastewater; it is designed to partially offset the cost.

The program is time-limited and dependent on the availability of federal funds. It is subject to closure without prior notice when funds are deemed to have been exhausted.

A household will only be determined eligible once in a Federal Fiscal Year (FFY) for each benefit type. A household will not be issued more than one payment for each benefit type in a fiscal year.

Federal Fiscal Year:

- First FFY starts October 1, 2021, and ends September 30, 2022
- Second FFY starts October 1, 2022, and ends September 30, 2023

Eligibility for Low-Income Household Water Assistance (LIHWAP) is based on several factors, including income, assistance group (AG) size, vulnerability to the cost of water/wastewater, residence, and citizenship.

WVIMM § 21.8.2.A provides, in part:

Income from all sources for the AG must be verified when the client indicates a source of income for any AG member.

When the client reports the AG has zero income during the month of application, he must verify how living expenses of the AG, defined as food, clothing, shelter, light, heat, water/wastewater, and incidentals, have been paid or how the AG members have managed without income for 30 days prior to the date of application. Form DFA-LIHWAP-2, Zero Income Heating Cost Verification Form, must be completed by the client.

WVIMM § 21.8.2.B provides, in part:

The AG consists of any individual or group of individuals who are living together in the same dwelling and for whom residential water/wastewater is customarily purchased in common or for whom water/wastewater is included in a rent or mortgage payment as a specified amount.

It is the responsibility of the client to list all individuals who are living in the home,

regardless of whether they are family members or whether or not they share the cost of water/wastewater for the purpose of LIHWAP eligibility, all household members are considered one AG.

When the AG includes a person(s) who has already received a LIHWAP payment as part of another AG, he is not included in the AG and his income is not counted in determining eligibility.

WVIMM § 21.8.2.E provides, in part:

All eligible AGs are entitled to one LIHWAP payment per federal fiscal year. Subsequent applications received from persons who have already been found eligible for or who have received a LIHWAP payment in that season are denied.

WVIMM § 21.8.2.E.1 provides, in part:

The customer must provide a copy of their current water/wastewater bill at the time of application or within 5 calendar days following the date the information is requested.

WVIMM § 21.8.3.A provides, in part:

The DFA-LIHWAP-1 consists of four sections, described below.

Section I Identifying information

- This section collects information about the client and is self-explanatory. All questions must be answered.

Section II Household Information

- This section collects assistance group name, social security number, date of birth, and source of income and amounts. It is the responsibility of the client to list all individuals who are living in the home, regardless of whether they are family members or whether they share the cost of water/sewer expenses. For the purpose of LIHWAP eligibility, all household members are considered one AG. Refer to IMM Section 21.8.2.B for more information.

Section III Emergency Information

- The client checks the box that is appropriate for their situation. (Water, Sewer, or Water/Sewer) In order for the client to be evaluated for the correct priority group the following questions need to be completed in detail. Clients must provide a copy of water or sewer bill with application.

Section IV Signatures and Statements of Liability

- The client must read, or have read to him, all the statements preceding his signature before signing the form. Failure to sign the form results in ineligibility.

DISCUSSION

The Low-Income Household Water Assistance Program (LIHWAP) provides financial assistance to eligible assistance groups (AG) responsible for water/wastewater cost. The program is time-limited and dependent on the availability of federal funds. Additionally, a household will not be issued more than one payment for each benefit type in a fiscal year [emphasis added]. The Appellant contested the Respondent's determination that she is ineligible for LIHWAP benefits. The Respondent bears the burden of proof to establish that action taken against the Appellant was in accordance with policy. The Respondent had to prove by a preponderance of evidence that the Appellant's LIHWAP benefits were correctly denied due to having already received this assistance type in the same federal fiscal year.

On May 15, 2023, the Appellant submitted an application for LIHWAP benefits for home water and sewage costs with her name listed as the applicant and a reported address of [REDACTED]. Included with the Appellant's application was a WVAW final termination notice issued to: [REDACTED]. The Appellant signed the Signature and Statements of Liability portion of the May 15, 2023 LIHWAP application, certifying that all answers and information provided are correct to the best of her knowledge.

On May 16, 2023, the Respondent issued a notice advising the Appellant that her application for LIHWAP benefits was approved with a benefit payment amount of \$333.09 issued to WVAW, beginning May 15, 2023. On July 11, 2023, the Respondent received an additional application for LIHWAP benefits for home water and sewage costs for [REDACTED] with a reported address of [REDACTED]. On July 20, 2023, the Respondent issued a notice advising the Appellant that her application for LIHWAP benefits was denied, due to having already received this assistance type in the same federal fiscal year.

The Appellant argued that the May 15, 2023 application was for her son, who is the sole resident of the address provided on the May 2023 application and WVAW termination notice. The Appellant argued that in the past, when she would complete WV DHHR documents for her son, she was advised to affix both hers and that of her sons, name. However, on May 15, 2023, the Appellant alleges that she was advised by a Department employee to complete the application solely in her name, rather than that of her son who allegedly resides at the address provided, assuring her that "because it's a different address, that's fine." The Appellant testified that even though the WVAW bill is in her name alone, the address and account number associated with the termination notice belongs to her son. The Appellant further testified that she "can understand why things get messed up," due to her name being listed on both WVAW service addresses, and because the Appellant and her son share the same case worker.

The Respondent testified that when reviewing the May 2023 application and all case comments in

the Appellants record, there was nothing noted to indicate that the Appellant's application was not her own. The Respondent argued that the Appellant failed to disclose that the application was being completed on her son's behalf. She further argued that because the Appellant's application was only in the Appellant's name, with only the Appellant's income reported, and with only the Appellant's signature affixed to the Statements of Liability portion of the form, in addition to the WVAW bill listing only the Appellant's name, there was no way to distinguish anything different. It should be noted that the Appellant did not report any other household residents or include any notations on the May 2023 LIHWAP application to indicate the form was being completed on behalf of another individual.

The Appellant then provided additional conflicting testimony, that, by her own admission, the May 2023 application "might have actually been for me [the Appellant]." The Appellant further explained that if the income listed on the application was that of her own, she "can guarantee" that the application was for her, since the Appellant's son "doesn't even have an income." However, the Appellant then argued that not only was the WVAW account number provided that of her sons, but because the address provided on the application and WVAW bill was his, it was "proof" that the application was for him.

Policy stipulates that it is the responsibility of the client [emphasis added] to list all individuals who are living in the home, regardless of whether they are family members or whether or not they share the cost of water/wastewater for the purpose of LIHWAP eligibility. Policy further provides that the income of all members of an AG must [emphasis added] be counted when determining eligibility for LIHWAP benefits. When an AG reports a zero income during the month of application, he must [emphasis added] verify how living expenses of the AG (defined as food, clothing, shelter, light, heat, water/wastewater, and incidentals) have been paid or how the AG members have managed without income for 30 days prior to the date of application by completing form DFA-LIHWAP-2, Zero Income Heating Cost Verification Form.

Policy mandates that it is the responsibility of the client to list all household members, along with individual incomes, for the purposes of LIHWAP eligibility. Per the Appellant's testimony, her son lives at the address listed on the May 2023 LIHWAP application and therefore, should have been listed in section 2: Household Information. Instead, when reviewing the application, the Appellant only included herself. Further, by the Appellant's own admission, her son has a zero income, and therefore, would have needed to complete the DFA-LIHWAP-2 zero income verification form in order to be considered for LIHWAP benefits. However, when reviewing the May 2023 application, the Appellant included her own income. Because no evidence was provided to the contrary that gave more weight to refute the credibility of the Respondent's findings, or the Appellant's own admission that if the income listed on the application was that of her own, she "can guarantee" that the application was her own, it is the finding of this Hearing Officer that the Respondent was correct to deny the Appellant's July 2023 application for LIHWAP benefits due to the Appellant having already received this assistance type in the same federal fiscal year.

CONCLUSIONS OF LAW

- 1) The Appellant was approved for LIHWAP benefits with a benefit payment amount of \$333.09, paid to WVAW on May 15, 2023.

- 2) Pursuant to policy, all eligible AGs are entitled to one LIHWAP payment per federal fiscal year.
- 3) Because eligible AGs are only entitled to one LIHWAP payment per federal fiscal year, subsequent applications received from persons who have already been found eligible or who have received a LIHWAP payment in the same season must be denied.
- 4) Because the Appellant was approved for LIHWAP benefits in May 2023, the Department must deny the Appellant's July 2023 application for LIHWAP benefits on the basis that a household cannot be issued more than one payment for each benefit type in a fiscal year.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant's July 2023 application for Low-Income Household Water Assistance Program benefits.

ENTERED this 10th day of August 2023.

Angela D. Signore
State Hearing Officer