



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

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

September 6, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2586

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Margaret Fain, Mercer County DHHR

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2586

**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 September 6, 2016, on an appeal filed August 30, 2016.

The matter before the Hearing Officer arises from the August 31, 2016 decision by the Respondent to deny the Appellant's application for Emergency Assistance benefits for shelter.

At the hearing, the Respondent appeared by Margaret Fain, Economic Service Supervisor. Appearing as a witness for the Respondent was Tammi Cooley, Front End Fraud Investigator. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Department's Summary

D-2 Statement from ██████████ dated August 30, 2016

D-3 Statement from ██████████ dated August 30, 2016

D-4 Case Household Information Screen Print

D-5 Statement from ██████████ dated August 30, 2016

D-6 Civil Summons: Wrongful Occupation of Residential Rental Property from the ██████████ County, West Virginia Magistrate Court dated August 23, 2016

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 Emergency Assistance (EA) benefits for shelter on August 29, 2016, due to the receipt of an eviction notice on August 23, 2016.
- 2) The eviction notice (D-6) notified the Appellant that the eviction was due to non-payment of rent and breach of leasehold covenant citing that the Appellant “moved someone in without knowledge or approval”.
- 3) The Appellant’s case was referred to the Front End Fraud Unit for verification of her household composition.
- 4) The Front End Fraud Investigator determined through the course of the investigation that the Appellant’s husband, [REDACTED], had been residing in her household and requested that he and his income be added to the Appellant’s case.
- 5) The Appellant’s EA application was denied on August 31, 2016, due to excessive income.

APPLICABLE POLICY

West Virginia Income Maintenance Manual §19.2B(6)(a) states that the Worker must determine availability of income to the applicant and all other members of the Assistance Group (AG). All countable gross income received by any member of the AG, beginning with date of application and ending 29 days later, must be counted in determining eligibility for Emergency Assistance. The total countable gross income of all members of the AG is compared to the Monthly Allowable Income Schedule in Appendix A.

West Virginia Income Maintenance Manual Chapter 10 Appendix A, indicates the Monthly Allowable Income for an AG size of four (4) is \$711.

West Virginia Income Maintenance Manual §19.2B(13) states that approval of Emergency Assistance benefits must “Eliminate the Emergency” which is defined as delaying or preventing the emergency from occurring for a period of not less than 30 days from the date the vendor is made aware of and accepts the Department’s offer. The client must be informed of this so there is no misunderstanding about how long the emergency will be delayed. This time period is most important for rent and utilities. The client must be informed that the DFA-67 voucher must be taken to the vendor without delay, if applicable.

When the applicant is otherwise eligible for, or approved for Emergency Assistance, yet the vendor refuses to eliminate the emergency, payment must be denied to the vendor. This may occur when the vendor is not satisfied with the amount of payment. Payment is not made to any vendor who refuses to eliminate the emergency.

DISCUSSION

The Department contended that the Appellant's husband, [REDACTED], has been residing in her home for several months, and therefore must be included in her case. [REDACTED] receives a monthly income from the Social Security Administration of \$733, which exceeds the allowable limit for EA benefits.

Investigator Tammi Cooley obtained a statement from the Appellant's landlord, [REDACTED], who stated that the Appellant's husband has been living in her home since July 2016, although he was not reported on the lease agreement. [REDACTED] stated he has spoken with [REDACTED] and observed him arriving and leaving the Appellant's residence of the mornings and late at night.

Investigator Cooley obtained a statement from [REDACTED] a neighbor of the Appellant's, who stated that the Appellant has had a man living with her since shortly after moving into the residence.

The address on record for [REDACTED] with the Department is [REDACTED]. Investigator Cooley verified that this residence has been vacant for two (2) months.

The Appellant denied that [REDACTED] resided in her home, and testified that he resided with his mother on [REDACTED]. The Appellant contended that she has health problems that have prevented her from working and [REDACTED] visits her home to help her with the children. The Appellant purported that the statements from her landlord and his brother should be considered unreliable. The Appellant argued that if her husband had been living with her for several months, then her landlord would have evicted her sooner for a breach of contract. It was only until she lost her job that eviction proceedings were initiated.

It should be noted that during the hearing, the Department verified through data exchange with the Social Security Administration that [REDACTED] address of record with the agency is [REDACTED].

Policy mandates that the income of all members of the Assistance Group must be counted when determining eligibility for Emergency Assistance benefits. The income received by [REDACTED] is excessive for the Appellant to receive this benefit.

The question to be decided is whether or not [REDACTED] resides with the Appellant. A statement from the Appellant's landlord obtained by the Department placed [REDACTED] in the Appellant's home. Although the Appellant provided another mailing address for [REDACTED] witness statements bear more weight in the credibility of the Department's assertion that [REDACTED] resides with the Appellant.

Additionally, the eviction notice for the Appellant was not only for non-payment of rent, but for a breach of contract for the addition of a household member without consent. The approval of Emergency Assistance benefits in this case would not alleviate the Appellant's emergency as the Appellant violated a legally binding contract regarding the members of her household as listed on her lease agreement.

CONCLUSIONS OF LAW

- 1) The Department provided credible evidence that the Appellant's husband is a resident of her household, and should be included in the eligibility determination for Emergency Assistance benefits.
- 2) The Appellant's husband has excessive income for the Appellant's household to receive Emergency Assistance.
- 3) The Department was correct to deny the Appellant's application for Emergency Assistance benefits due to excessive income.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's denial of Emergency Assistance benefits for shelter due to excessive income.

ENTERED this 6th day of September 2016

**Kristi Logan
State Hearing Officer**