



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

January 28, 2005



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 19, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to establish and seek collection of a WV Works claim.

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.

Eligibility for the Cash Assistance (WV Works) program is based on current policy and regulations. Some of these regulations state as follows: All child support payments made on behalf of children who are recipients of WV Works must be redirected to Bureau of Child Support Enforcement (BCSE) and for the Application month the Worker must consider Child Support income which has already been received during the month of application. When an assistance group has been issued more Cash benefits than it was entitled to receive, corrective action is taken by establishing a claim. Collection action is initiated against the Assistance Group which received the overissuance. All claims, whether established as a result of an error on the part of the Agency or the household, are subject to recoupment and repayment. (West Virginia Income Maintenance Manual # 15.3 D., 10.24 5. a, & 20.2).

The information which was submitted at the hearing revealed that your household was overpaid in cash assistance and the Agency was correct in their action to establish a WV Works agency error claim.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to seek collection of the WV Works claim from you

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

CC: Chairman, Board of Review
DHHR, Karen Crossland, RI

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

January 28, 2005

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 19, 2005 for [REDACTED]. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on a timely appeal filed December 21, 2004.

It should be noted here that recoupment under the WV Works program has been suspended through this hearing process.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

WV WORKS was created by Senate Bill 140 Article 9 of the West Virginia Code and the Temporary Assistance to Needy Families Block Grant, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The purpose of WV Works is to provide assistance to needy families with children so they can be cared for in their own home, reduce dependency by promoting job preparation, work and marriage. The goals of WV WORKS are to achieve more efficient and effective use of public assistance funds, reduce dependency on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

[REDACTED] Claimant
Karen Crossland, State Repayment Investigator, Agency Representative

Presiding at the hearing was Sharon Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED

The question to be decided is whether the Agency was correct in their establishment of a WV Works claim and the proposal to pursue repayment from the claimant for the claim.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 10.24, A,1 & B,2 ; 15.3, D and 20.3.
45 CFR § 205.10 - Code of Federal Regulations.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Exhibit -D1	WV Works Claim Determination and Computation Sheets
Exhibit -D2	Verification of BCSE Child Support payments
Exhibit -D3	Income Maintenance Policy, 20.3, Benefit Repayment

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VII. FINDINGS OF FACT & CONCLUSIONS OF LAW:

1. Claimant applied for WV Works for the Month of May 2004 at the [REDACTED] DHHR office. She had received a child support check in the month of April, but it was the first child support check she had received since July 2003. The worker could not

reasonably anticipate this income to be received in the month of May. Ms. [REDACTED]'s WV Works application was approved on May 12, 2004 and benefits were issued backdated to May 3, 2004. The claimant had been made aware that future Child Support payments would be retained by the Agency during the months of active WV Works benefits and that any Child Support payments received must be redirected back to the Agency.

2. Ms. [REDACTED] did receive another Child Support check through the Bureau of Child Support Enforcement, (BCSE), prior to the WV Works Application being approved. This Child Support check, in the amount of \$173. was distributed to Ms. [REDACTED] on May 1, 2004 and most likely was received after the date of her WV Works application. The BCSE computer system does have an interface connection to the WV Works computer system, which allows for the retention of Child Support payments when a custodial parent is an active recipient of the WV Works program. Since the claimant's WV Works benefits did not get approved until May 12, 2004, the retention of the May 1, 2004 check did not take place. The claimant did not redirect this Child Support back to the Agency, nor did she advise the WV Works case worker when she received the Child Support check.
3. Had the case worker been advised by Ms. [REDACTED] or by BCSE that this \$173. was received early in the month of May, the worker could and should have considered this income in the calculations of the initial WV Works check. Ms. [REDACTED] stated during this hearing that she didn't feel that it should have been her obligation to figure out what to do with the Child Support check. Ms. [REDACTED] was in a desperate financial situation and at the time the Child Support check was received, she had not been advised that her WV Works application would be approved.
4. The claimant indicated that she was not clear on whether she was to redirect the May Child Support check or not.
5. The Child Support of \$173. minus a \$50. disregard should have been counted as income against the May WV Works check and it wasn't. Instead, the WV Works benefits were issued for the maximum payment amount for a prorated month starting with May 3rd.
6. A WV Works claim of \$114. was established against the household for the overpaid benefits.
7. **West Virginia Income Maintenance Manual § 10.24 B. 2.:**
If the client is receiving child support payments at the time of application, and the application is approved, it may not be possible or practical for him to redirect the support payment received during the effective month of approval. It is also possible that the child support, which has already been redirected to BCSE, has been released to the client. In these situations, the first \$50 is disregarded and the remainder is counted as income. The client is not considered out of compliance with the redirection requirement if he fails to redirect when: the Child support payment is received during the effective month of approval of the application. The Worker considers the unredirected child support payment in excess of \$50. as income, only in the month of application.
8. **West Virginia Income maintenance Manual § 10.24 A. 1:**
For all cases, the Worker must determine the amount of income that can be reasonably anticipated for the AG. For all cases, income is projected; past income is used only when it reflects the income the client reasonably expects to receive.
9. **West Virginia Income Maintenance Manual § 15.3:**
All child support payments made on behalf of children who are recipients of WV WORKS must be redirected to BCSE.
10. **West Virginia Income Maintenance Manual § 20.3:**
When it is discovered that excess benefits have been issued, corrective action must be taken. When an AG (assistance group) has been issued more Cash Benefits than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation (UPV) or Intentional Program

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VII. Section Continued:

Violation (IPV) claim. The claim is the difference between the entitlement the assistance group received and the entitlement the assistance group should have received.

11. **West Virginia Income Maintenance Manual § 20.3,C:**
There are two types of UPV's, client errors and agency errors.
A UPV claim is established when:
 - An error by the Department resulted in the overissuance, except when the Worker failed to have the application form signed.
 - An unintentional error made by the client resulted in the overissuance
12. **West Virginia Income Maintenance Manual § 20.2, E:**
Collection action is initiated against the AG which received the overissuance.
The following persons are equally liable for the total amount of the overpayment and are liable debtors:
 - Adult or emancipated minors in the AG
 - Disqualified individuals who would otherwise be required to be included
 - An unreported adult who would have been required to be in the AG had he been reported

- Sponsors of alien AGs when the sponsor is responsible for the overpayment
- An authorized representative of an AG if he is responsible for the overpayment

VIII. DECISION:

Policy is clear that when an assistance group has been issued more WV Works benefits than it was entitled to receive, corrective action is taken by establishing an Unintentional Program Violation (UPV), caused by Agency or Client, or an Intentional Program Violation (IPV) claim. The claim is the difference between the entitlement the assistance group received and the entitlement the assistance group should have received. Policy also stipulates that collection action is initiated against the assistance group which received the overissuance regardless of where the fault lies and that Adults or emancipated minors in the assistance group are liable for the claim.

Testimony of both the claimant and the Agency representative clearly concludes that Ms. [REDACTED] did receive WV Works benefits that she was not eligible for. This was due to error on the part of the Claimant and the Agency. The Child Support income was not reported by the claimant, the Worker did not double check the Child Support computer system prior to the approval of the WV Works benefits and the interface between the computer systems is not set up to identify a pending WV Works application. Policy stipulates that the client is not considered out of compliance when he does not redirect Child Support in the effective month of approval, therefore the claim amount in this case does take into consideration a \$50. child support disregard. The remainder of the child support was subtracted from the Full monthly grant amount before further calculating the prorated amount for May.

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **uphold** the Agency's action in establishing the Agency Error claim and the action to seek repayment of the WV Works claim, from the claimant.

IX. RIGHT OF APPEAL

See Attachment

X. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
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Form IG-BR-29