



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 22, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 21, 2005. Your hearing request was based on the Department of Health and Human Resources' action to require repayment of WV Works assistance check in the amount of \$2681.

In arriving at a decision, the State Hearings 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 WV Works assistance check Program is based on current policy and regulations. Some of these regulations state as follows: when an AG has received more cash assistance than it was entitled to receive, corrective action is taken by establishing a claim for the overpayment (WV Income Maintenance Manual Section 20.3).

The information which was submitted at your hearing revealed that an overpayment of WV Works cash assistance in the amount of \$2681 occurred during the period of June, 2002 through April, 2003.

It is the decision of the State Hearings Officer to uphold the action of the Department to require repayment of WV Works assistance check in the amount of \$2681.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Debbie Roberts, Repayment Investigator

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

Claimant.

v. Action Number:

**West Virginia Department of
Health and Human Resources.**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on July 21, 2005 for _____. 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 July 21, 2005 on a timely appeal, filed March 1, 2005. It should be noted that the hearing was originally scheduled for April 21 and May 18, 2005 but was rescheduled initially at Department's request and then at claimant's request.

It should be noted here that the claimant does not receive WV Works benefits pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled WV Works is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

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 dependence on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

1. _____, Claimant.
2. Debbie Roberts, Repayment Investigator.
3. Stacey Hawley, Bureau for Child Support Enforcement, Child Support Specialist II.
4. _____, Claimant's mother.

Presiding at the Hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department took the correct action to establish a repayment claim of \$2681 for WV Works assistance check.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Sections 1.24, 1.25, 20.3.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of benefit recovery referral.
- D-2 Copy of manual section 1.2.
- D-3 Copy of Cash Assistance Claim Determination (21 pages).
- D-4 Copy of Combined Application and Review Form 6-3-02 (7 pages).
- D-5 Copy of Rights and Responsibilities 6-3-02 (4 pages).
- D-6 Copy of Personal Responsibility Contract for _____ 7-3-02 (3 pages)
- D-7 Copy of birth certificate for _____ (2 pages).
- D-8 Copy of case comments 12-23-02.
- D-9 Copy of case comments 1-3-03.
- D-10 Copy of Combined Application and Review Form 4-7-03 (10 pages).
- D-11 Copy of Rights and Responsibilities 4-7-03 (5 pages).
- D-12 Copy of case comments 5-30-03 and change report form (2 pages).
- D-13 Copy of case comments 6-5-03 and review form (5 pages).
- D-14 Copy of case comments 9-4-03.
- D-15 Copy of case comments 10-30-03.
- D-16 Copy of Combined Application and Review form 3-30-04 (11 pages).
- D-17 Copy of Rights and Responsibilities 3-30-04 (5 pages).
- D-18 Copy of case comments 3-31-04.
- D-19 Copy of Combined Application and Review form 8-12-04 (13 pages).
- D-20 Copy of Rights and Responsibilities 8-12-04 (4 pages).
- D-21 Copy of statement signed by _____ and _____ 8-12-04.

- D-22 Copy of WV Income Maintenance Manual Section 1.25 pages 122-123 (2 pages).
- D-23 Copy of WV Income Maintenance Manual Section 1.25 pages 124-143 (11 pages).
- D-24 Copy of WV Income Maintenance Manual Section 1.25 pages 144-147 (4 pages).
- D-25 Copy of WV Income Maintenance Manual Section 1.25 pages 148-149 (2 pages).
- D-26 Copy of WV Income Maintenance Manual Section 20.3 (5 pages).
- D-27 Copy of notification letter 2-28-05 (2 pages).
- D-28 Copy of Bureau for Child Support Enforcement files (10 pages).

VII. FINDINGS OF FACT:

- 1) The claimant received WV Works cash assistance from June 3, 2002 through April, 2003 in the amount of \$2681 for herself and her child which did not include the father of the child, _____, as a AG member.
- 2) The claimant reported on 4-7-03 that the father of her child, _____, was now a member of the AG.
- 3) The claimant and Mr. _____ signed a statement notarized by Stacey Hawley of the Bureau for Child Support Enforcement (BCSE) on 8-12-04 that they got together on 7-4-01 and had been together for the last 3 years.
- 4) The Repayment Investigator determined that the claimant was ineligible for WV Works cash assistance for the period of June, 2002 through April, 2003 as Mr. _____ had been a member of the AG but had not registered with the WV Works Program and had not completed WV Works Program requirements, including completion of a Personal Responsibility Contract (PRC), and a repayment claim was established.
- 5) Notification of cash assistance overpayment in the amount of \$2681 was sent to the claimant on 2-28-05 and the claimant requested a hearing on 3-1-05.
- 6) The claimant testified that Mr. _____ came to see her every day but did not move in with her until March, 2003 when they moved to [REDACTED] and that the statement she wrote and that she and Mr. _____ signed did not mean that they lived together but that he came every day to see her and their child.
- 7) The claimant testified that she wrote the statement because she did not want Mr. _____ to pay child support.
- 8) The claimant's mother, _____, testified that Mr. _____ was there to help when the child was born but he would leave and did not spend the night as he lived with his parents and that when they moved to [REDACTED] he moved in with her.
- 9) Ms. Hawley testified that when she notarized the statement dated 8-12-04, it was her understanding that Ms. _____ and Mr. _____ had been living together, that they wanted the child support stopped and she explained that they had to go to court to do that, that a petition was filed in court on 8-16-04 to stop the child support and it was stopped, and that she understood that the statement meant that they were living together.
- 10) WV Income Maintenance Manual Section 20.1 states, in part:

“20.1 INTRODUCTION

“The Department is responsible for accurately determining the client's eligibility for Food Stamps, the former AFDC/U program, WV WORKS, CSI, the former TANF program, WV WORKS school clothing allowance, West Virginia school clothing allowance and Medicaid. When it is discovered that excess benefits have been issued, corrective action must be taken.”

11. WV Income Maintenance Manual Section 20.3 states, in part:

"Repayment is pursued for cash assistance overpayments made under the former AFDC/U Program, WV WORKS, CSI, the former TANF Program, WV WORKS School Clothing Allowance, and the West Virginia School Clothing Allowance.

EXCEPTION: DCA and EA overpayments are not subject to repayment, unless fraud is established.

The establishment, notification and collection of cash assistance claims are the responsibility of the Claims and Collections Unit, IFM.

When an AG 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. The policy by which cash assistance claims are referred, established, collected and maintained follows.

NOTE: Referrals must be made for all overpayments, regardless of the dollar amount. However, IFM does not write claims for under \$100 unless there is a liable debtor approved for cash assistance at the time the claim is processed. Claims under \$100 are written and collected by check reduction. See Item F below. Once the claim is established, there are no hardship provisions or exceptions which delay, suspend or terminate efforts to collect the claim.

A. REFERRAL PROCESS

Upon discovery of a potential cash assistance claim, the Worker refers the case to the RI by completion of the BVRF screen in RAPIDS.

NOTE: If either of the following conditions exist, see the fraud referral process in Section 20.6:

- The amount of the cash assistance due to client misrepresentation is greater than \$500; or
- The cash assistance overpayment in combination with other overissued benefits from other programs due to client misrepresentation is greater than \$500;.....

E. COLLECTING THE CLAIM

1. Collection Priority

Collections can be made on only one claim at a time. Claims are collected according to the following priority order.

- Fraud
- Client error
- Agency error.....

The following persons are equally liable for the total amount of overpayment and are liable debtors.

- Adult or emancipated minors in the AG
- Disqualified individuals who would otherwise be required to be included.
- Caretaker relatives who signed the application/redetermination at the time of overpayment.
- 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.

When the AG composition changes, collection is pursued against any and all AG's which include a liable debtor.....

2. Claim Notification

a. Client and Agency Claims

The AG is notified of the cash assistance claim by computer-generated notification/demand payment letters from RAPIDS. Enclosed with the letter is a repayment agreement, form ES-REPAY-1, and a postage-paid envelope.....

F. DETERMINING THE REPAYMENT AMOUNT

1. Active Recipients

The monthly repayment amount is 10% of the AG's total gross, non-excluded earned and unearned income, including the actual WV WORKS check amount, which may include reductions and incentives described in Section 10.24 or sanctions described in Section 13.9 and the Child Support Incentive. The amount is determined as follows:

- If the AG has no income other than the WV WORKS check, the repayment amount is determined by multiplying the check amount, after application of any reductions, incentives, or sanctions by 10% and dropping the cents.
- If the AG has income other than the WV WORKS check, the repayment amount is determined as follows:

Step 1: Add together:

- The non-excluded gross earned income of the income group, with no deductions applied
- All non-excluded unearned income of the income group
- The actual WV WORKS check amount, including the Child Support Incentive

Step 2: Determine 10% of the amount in Step 1 and drop the cents.

This is the monthly repayment amount. When the amount determined in Step 2 is less than the WV WORKS check amount, the monthly recoupment amount is equal to the amount calculated in Step 2. When the amount determined in Step 2 is greater than or equal to the WV WORKS check amount from Step 1, the monthly recoupment amount is equal to the WV WORKS check amount less \$1. The client may voluntarily repay at a higher rate, but the Department may not require repayment at a higher or lower rate than that specified above. repayment purposes only, cash assistance is defined as payments made under the former AFDC/U Program, WV Works, TANF, Emergency Assistance, and School Clothing Allowance.....

2. Former Recipients

Liable debtors are responsible for payment of all claims regardless of case status. Form ES-REPAY-1 offers the client the following options to repay when there is no liable debtor.

a. Lump Sum Payment

One payment is made to pay the claim in its entirety.

b. Installment Payments

When the AG is financially unable to pay the claim in one lump sum, regular monthly installment payments are accepted. The minimum amount of the monthly payment is \$50. If the CI/RI determines that the AG cannot afford the minimum payment, the payment amount is negotiated on a case-by-case basis."

VIII. CONCLUSIONS OF LAW:

- 1) WV Income Maintenance Manual Section 20.3 states that repayment is pursued for cash assistance under the WV Works Program when an AG has received more cash assistance than it was entitled to receive. The claimant received WV Works cash assistance from June, 2002 through April, 2003 at which time she reported that the father of her child had become a member of the AG. On 8-12-04, the claimant and the father of her child, _____, signed a statement acknowledging that "on July 4th, 2001 we got together We have been together for the last 3 years and are still together" and the statement was written by the claimant and was notarized by Stacey Hawley with the BCSE. Ms. Hawley testified that it was her understanding from the claimant and Mr. _____ that the statement meant that they had lived together for the past 3 years. The

claimant's mother testified that the claimant and Mr. _____ did not live together during that period of time. The State Hearing Officer is convinced that the claimant and Mr. _____ did live together during the period of time in question and that the statement written by her and signed by her and Mr. _____ on 8-12-04 meant that they had lived together for the last 3 years. Thus, the establishment of a WV Works cash assistance overpayment claim was correct and in compliance with current regulations.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to require repayment of WV Works cash assistance in the amount of \$2681 for the period of June, 2002 through April, 2003.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of July, 2005.

Thomas M. Smith
State Hearing Officer