



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 5, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 15, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal that you owe a repayment of WEST VIRGINIA WORKS benefits.

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 WEST VIRGINIA WORKS is based on current policy and regulations. Some of these regulations state as follows:

"The maximum allowable asset for the WV WORKS Program is \$2,000.00 regardless of the number in the Assistance Group." (West Virginia Income Maintenance Manual (WVIMM) Section 11.3 MAXIMUM ALLOWABLE ASSETS (WV WORKS)).

The information submitted at your hearing revealed: You were not eligible for WEST VIRGINIA WORKS benefits for the period covering September 2003 through August 31, 2004. This resulted in an over issuance amount of \$3,689.00.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to establish a repayment claim for over issued WEST VIRGINIA WORKS benefits.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Danita Bragg, Repayment Investigator

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

_____,
Claimant,

Action Number: 05-BOR-5771

**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 October 5, 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 15, 2005 on a timely appeal, filed May 20, 2005.

It should be noted here that the claimant was not receiving WEST VIRGINIA WORKS benefits at the time of the fair hearing. The WEST VIRGINIA WORKS case was closed August 31, 2004. A pre-hearing conference was held between the parties prior to the hearing. Ms. _____ stated she had talked with Legal Aid of West Virginia, Inc. and they were not available for the hearing. There were no further statements regarding legal representation.

II. PROGRAM PURPOSE:

The Program entitled WEST VIRGINIA 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:

_____, Claimant

Danita Bragg, Repayment Investigator – Office of Inspector General’s Investigation,
Management and Fraud Unit

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member
of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is Does Ms. _____ owe a repayment of WEST VIRGINIA
WORKS benefits?

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual (WVIMM) Section 11.3 MAXIMUM
ALLOWABLE ASSETS (WV WORKS); 11.4 LIST OF ASSETS; WVIMM 11.5 ASSETS OF
PERSONS IN SPECIAL CIRCUMSTANCES and; WVIMM Section 20.3 CASH
ASSISTANCE CLAIMS AND REPAYMENT PROCEDURES

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department’s Exhibits:

- D-1 Cash Assistance Claim Determination Form
- D-2 AFDC Issuance History Screen
- D-3 WV WORKS Grand Determination Screen
- D-4 DMV Printout of cars for Ms. _____
- D-5 NADA values for vehicles registered to Ms. _____
- D-6 Bank Statement for Brother’s Checking Account
- D-7 WVIMM Section 11.3; 11.4; 11.5
- D-8 WVIMM Section 20.3 Cash Assistance Claims
- D-9 Fair Hearing Summary
- D-10 Scheduling Notice date 05/23/05
- D-11 Notification of Cash Assistance Overpayment dated 05/02/05
- D-12 IG-BR-30 Outline of Exhibits
- D-13 Request for Hearing dated 05/13/05

Claimants’ Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

- 1) This issue involves the proposed overpayment of WEST VIRGINIA WORKS benefits based upon certain assets available to Ms. _____. According to Mrs. Danita Bragg, Ms. _____ has several vehicles registered in her name, in addition to access to her brother's checking account.
- 2) Mrs. Danita Bragg submitted the following Hearing Summary:

I. IDENTIFYING INFORMATION:

RFA#: _____
Claim#: _____
SSN: _____

II. CASE DATA:

ELIGIBILITY FACTOR: Ms. _____ had access to her brother's checking account and vehicles. Ms. _____ had four vehicles in her own name. These additional assets made the household over asset for TANF benefits. Last vehicle was placed in Ms. _____'s name 08/04/03. Started repayment 09/03. Household was totally ineligible for TANF benefits 09/03 - 08/04.

DATE OPENED: October 12, 1999 DATE CLOSED: August 31, 2004

OVER ISSUANCE PERIOD: September 2003 through August 2004

OVER ISSUED AMOUNT: \$3,689

III. SUMMARY OF FACTS:

The Claims & Collection Unit of the Office of the Inspector General received a repayment referral on this case November 12, 2004, from the _____ County DHHR WV Works Supervisor for over issuance of TANF due to household being over the asset limit. Ms. _____ completed a review at the _____ outstation on August 6, 2004. At this time it was discovered that she was listed as having access to her brother's checking account and it was stated by Ms. _____ that she writes all of the checks that are written on this account. Ms. _____ is also listed as co-owner of her brother's vehicle. All of the above assets are accessible to Ms. _____. She also had three vehicles licensed in her name only. They were a 1992 Ford Aerostar Van, a 1990 Nissan Stanza, which was not in her name until 08/04/03, and a 1985 Jeep Wagoneer. She states her brother has a 1984 Chevrolet truck which is listed in DMV in both their names. She also states he has a 1984 Chrysler which is not showing in DMV. Ms. _____ has her own personal checking account. When all of the above information was entered in the system, the case failed eligibility for TANF due to being over asset. Ms. _____ has acknowledged she has been on her brother's checking account for several years. Ms. _____ was told to bring in a written estimate for the value of her vehicles from a reputable dealer. This was not provided. She did bring a handwritten statement on note paper which stated value of all vehicles was estimated at \$1500.00. Also brought in computer sheets from Kelly Blue Book. However, she says due to some vehicles not running their value is zero. Ms. _____ does not feel she should have to repay these benefits as she feels we are over valuing the vehicles and also states she cannot spend her brother's income on anything other than his needs. Ms. _____ did request this hearing.

EVIDENCE:

DHS-1) Agency Form ES-C/U-5 Cash Assistance Claim Determination Form. This form shows the calculation of the over issuance. The over issuance is determined by comparing the actual amount of Cash Assistance issued to the household with the corrected amount of Cash Assistance. These amounts are shown on the right and left-hand columns of the form respectively. The corrected amounts are determined by recalculating Cash Assistance allotments with the excluded eligibility factor which in this case is household being over asset to receive Cash Assistance. The total overpayment of \$3,689 for this claim period is shown at the bottom of the form, inside the block marked "Loss to Program."

The vehicle assets were determined in the following manner: The 1992 Ford Aerostar Van was excluded; 1990 Nissan Stanza was valued at \$825.00; 1985 Chevrolet Pickup Long Bed valued at \$1,130.00; 1985 Jeep Wagoneer Limited Sport Utility valued at \$525.00. The vehicle assets totaled \$2,480.00. The vehicle assets were in excess of the \$2,000.00 asset limit, without counting the \$1,423.78 in the joint checking account.

DHS-2) IQAF Screen Prints from the RAPIDS Computer System. These screen prints show the amount of Cash Assistance issued to Ms. _____'s household during the claim months. The amounts under the heading "Issued Amount" correspond with the actual TANF allotment amounts in the DHS-1.

DHS-3) EAWG Screen Prints from the RAPIDS Computer System. These screen prints show the calculation of the Cash Assistance allotments at the time they were issued. They do not include the incorrect eligibility factor of household being over asset which wasn't included in the household Cash Assistance calculations.

DHS-4) Copy of all Vehicles listed in DMV for Ms. _____. These vehicles were licensed for Ms. _____ and/or her brother.

DHS-5) Copy of Values of Vehicles which could be found in NADA at the time of this over issuance. Values have changed some now.

DHS-6) Copy of Bank Statement provided by Ms. _____ for her brother's checking account.

DHS-7) IM Manual Chapter 11.3, 11.4, 11.5 - Chapter 11 of the Income Maintenance Manual deals with Assets.

DHS-8) IM Manual Chapters 20.3 - Cash Assistance Stamp Claims and Repayment Procedures.

IV. RIGHTS AND RESPONSIBILITIES: EVALUATION OF CLIENT'S UNDERSTANDING OF AGENCY POLICY AND RECOMMENDATIONS:

Based on the above information the Office of Inspector General, Investigation & Fraud Management, Claims & Collections Unit request this over issuance of Cash Assistance stand and repayment of \$3,689 allowed to be pursued.

3) West Virginia Income Maintenance Manual (WVIMM) Section 11.3 MAXIMUM ALLOWABLE ASSETS (WV WORKS) states in part,

The maximum allowable asset for the WV WORKS Program is \$2,000.00 regardless of the number in the Assistance Group.

4) West Virginia Income Maintenance Manual (WVIMM) Section 11.4 B (5) (b) WV WORKS, AFDC MEDICAID and AFDC-RELATED MEDICIAD states,

When a non-AG member's funds are deposited into an AG member's account, any portion of that deposit that remains in the account in the month following the deposit month is counted as an asset for the AG.

5) West Virginia Income Maintenance Manual (WVIMM) Section 11.4 LL - Vehicles states in part,

The owner of a vehicle is generally the individual to whom it is titled. However, when the title of a vehicle is not in the client's name, but the client states he is the owner, the vehicle is counted as the client's asset. If the title is in the client's name, and he indicates the vehicle no longer belongs to him, and the name on the title has not been changed, the vehicle is presumed to be his, unless he can prove otherwise. Only those vehicles of members of the AG, individuals who are disqualified or excluded by law and who would otherwise be required to be included, are considered when determining vehicle assets.

A leased vehicle, in which the individual has no equity and which he cannot sell, is excluded.

The NADA trade-in value is usually used as the FMV for Food Stamps, AFDC Medicaid, WV WORKS and AFDC-Related Medicaid.

The NADA retail value is usually used as the FMV for SSI-Related Medicaid, CDCS, PAC, QDWI, QMB, SLIMB, QI-1 and QI-2.

Neither the trade-in value nor the retail value is increased or decreased by adding or subtracting the value of low-or high-mileage or other factors, such as optional equipment or special equipment for the disabled.

6) West Virginia Income Maintenance Manual (WVIMM) Section 11.4 LL (4) - WV WORKS states in part,

One (1) vehicle is excluded regardless of value. If the client has more than one vehicle, he chooses which vehicle to exclude. The Fair Market Value, not equity, of all other vehicles is an asset.

7) West Virginia Income Maintenance Manual (WVIMM) Section 11.5 B (3) (b) (2) – WV WORKS states,

Treatment of jointly owned assets becomes significant when all the joint owners are not included in the AG.

- (1) All Joint Owners in the AG

If all joint owners are in the AG, the total countable value of the asset is counted as an asset for the AG.

(2) All Joint Owners Not in the AG

If all joint owners are not in the AG, the following general rules apply:

- The non-excluded assets of an individual who is excluded by a law of disqualification, who would otherwise be required to be included, are available to his spouse and children in their entirety.
- The assets available to the AG from the disqualified individual are:
 - The value of the assets owned solely by the disqualified individual; and
 - The asset value assigned to the disqualified individual as a result of joint ownership.
- The assets considered available to the AG from other joint ownership is the countable asset value assigned to the AG as a result of the joint ownership, plus any other assets owned solely by AG members.

8) West Virginia Income Maintenance Manual (WVIMM) Section 20.3 Cash Assistance Stamp Claims and Repayment Procedures 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.

9) Ms. _____ is her brother's representative through Social Security and can only spend the money for his benefits. He is mentally incapable of taking care of himself. The financial responsibilities for her brother were previously done by their mother. Whenever she applied for benefits at the WV DHHR, she has always informed the Department of the bank account as well as, her name on the vehicle registrations. There were never any concerns expressed with her case workers. Ms. _____ placed her name on the vehicle registrations for insurance purposes. According to Ms. _____ she has three vehicles in her yard that are not operational.

10) The Department entered the repayment claim before receiving the request for hearing. The request for hearing was received within thirteen (13) days of the repayment notice. Ms. _____ received a request for payment on the over issued claim prior to the fair hearing. The Department was directed to rescind the claim until a decision is rendered by the State Hearing Officer.

VIII. CONCLUSIONS OF LAW:

1) The asset limit for the WEST VIRGINIA WORKS program is \$2,000.00. regardless of the number in the assistance group. The total assets in this particular matter were calculated in the following manner: Vehicle Assets - \$2,480.00 + Joint Checking Account Assets (08/04) - \$1,423.78 = \$3,903.78.

2) Ms. _____'s name on the checking account as her brother's payee is covered under the following policy citations:

West Virginia Income Maintenance Manual Section 11.4 B (5) (b) WV WORKS, AFDC MEDICAID and AFDC-RELATED MEDICIAD states,

“When a non-AG member's funds are deposited into an AG member's account, any portion of that deposit that remains in the account in the month following the deposit month is counted as an asset for the AG.” and;

West Virginia Income Maintenance Manual (WVIMM) Section 11.5 B (3) (b) (2) – WV WORKS states in part,

“The assets considered available to the AG from other joint ownership is the countable asset value assigned to the AG as a result of the joint ownership, plus any other assets owned solely by AG members.”

3) Ms. _____ expressed her dissatisfaction with the unfairness of the policy for repayment, especially, when she had reported the circumstances to her case worker. According to the West Virginia Income Maintenance Manual Section 20.3 Cash Assistance Stamp Claims and Repayment Procedures it states in part, “Referrals must be made for all overpayments, regardless of the dollar amount.”

4) The testimony and documentation submitted during the July 15, 2005 fair hearing, support the Findings that Ms. _____ received \$3,689.00 in over issued WEST VIRGINIA WORKS benefits for the period covering September 2003 through August 2004.

IX. DECISION:

It is the decision of this State Hearing Office to UPHOLD the PROPOSAL of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of October, 2005.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer