



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
227 Third Street  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 29, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 22, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to seek the repayment of West Virginia Works benefits.

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 West Virginia Works Program is based on current policy and regulations. Some of these regulations state as follows: If the Department made an AFDC Foster Care payment, a West Virginia Works payment cannot be initiated for the same period because this results in a duplication of payments. Individuals who are recipients of federal, state or local foster care payments are ineligible to be included in the West Virginia Works assistance group (West Virginia Income Maintenance Manual Sections 15.2 B and 9.21 A, 3)

Information submitted at your hearing revealed that you received \$1,505 in West Virginia Works benefits to which you were not entitled since you were simultaneously receiving foster care payments.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to seek a repayment of West Virginia Works benefits as a result of an Agency error.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Jennifer Butcher, SRI, DHHR

**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 September 29, 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 September 22, 2005 on a timely appeal filed June 28, 2005. The hearing was originally scheduled for August 18, 2005, but was rescheduled at the Claimant's request.

**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 and 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

Jennifer Butcher, State Repayment Investigator, DHHR

Elles Ulland, Family Support Specialist, DHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Agency took the correct action in seeking the repayment of West Virginia Works benefits.

### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Sections 15.2 B and 9.21, A, 3

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

D-1 Rapids Benefit Recovery Referral information

D-2 West Virginia Income Maintenance Manual Section 15.2 B

D-3 Cash Assistance Claim Determination form

D-4 West Virginia Income Maintenance Manual Section 10.3 HH

D-5 West Virginia Works application with Rights and Responsibilities dated March 8, 2004

### **VII. FINDINGS OF FACT:**

- 1) The Claimant was receiving a West Virginia Works check for her two brothers as a caretaker relative.
- 2) On October 12, 2004, the Claimant began receiving foster care payments for her brothers. This information was reported to a West Virginia Works worker who determined that the Claimant could simultaneously receive West Virginia Works and foster care payments. This determination was made based on West Virginia Income Maintenance Manual Chapter 10.3 HH (D-4) which indicates that foster care payments are not counted as income for West Virginia Works.
- 3) The Agency later discovered that it had incorrectly determined the Claimant's dual eligibility for West Virginia Works and foster care payments based on additional information obtained in West Virginia Income Maintenance Manual Chapter 15.2 B (D-2). This information states:

For WV Works, it may be impossible for a relative to establish a home for a child who is in a foster home, or other place, without financial assistance before the child enters his home. The payment may be initiated any time within 30 days prior to the date the child actually goes to live with the specified relative. If the Department made an AFDC Foster Care payment, a WV Works payment cannot be initiated for the same period because this results in a duplication of payments.

- 4) The Agency contended the dual payments resulted in an over issuance of \$1,505 in cash assistance for the period of November 2004 through March 2005 as computed on a Cash Assistance Claim Determination form (D-3).
- 5) The Claimant testified that she had reported the foster care payments and was told that she would not have to repay benefits. In addition, she contended that she was unaware of the requirement that she must repay benefits as the result of an Agency error.
- 6) West Virginia Income Maintenance Manual Section 9.21, A, 3 states, in part, regarding West Virginia Works:

#### Who Cannot Be Included

The following situations result in ineligibility for the individual who meets at least one of the following criteria. However, when all members of the AG meet any of the criteria listed below, the entire case is ineligible.

- An individual who is a recipient of a federal, state or local foster care maintenance payment.

**NOTE:** The caretaker relative may receive WV WORKS when there are no children in the AG if all the children are ineligible for WV WORKS only because they receive foster care payments.

### **VIII: CONCLUSIONS OF LAW:**

- 1) The Claimant received West Virginia Works cash assistance for her brothers during the period of November 2004 through March 2005.
- 2) The Claimant received foster care payments for her brothers during the period of November 2004 through March 2005.
- 3) Policy dictates that foster care payments are not counted as income for the West Virginia Works Program. However, West Virginia Income Maintenance Manual Chapter 15.2 B indicates that receiving foster care and West Virginia Works benefits

simultaneously constitutes a duplication of payments. Therefore, the West Virginia Works payment cannot be initiated. In addition, Chapter 9.21, A, 3 states that recipients of foster care maintenance payments are ineligible to be included in the West Virginia Works assistance group.

- 4) While the Claimant was originally advised that she could receive West Virginia Works and foster care payments simultaneously, the Agency later discovered policy that prohibits the duplication of these benefits.
- 5) An Agency error resulted in an overpayment of West Virginia Works benefits for the period of November 2004 through March 2005.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to seek the repayment of \$1,505 in West Virginia Works benefits as the result of an Agency error.

**X. RIGHT OF APPEAL:**

See Attachment

**X. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 29th Day of September, 2005.**

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**Pamela L. Hinzman  
State Hearing Officer**