



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 4, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 14, 2006 & December 14, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to establish and seek collection of a cash assistance repayment claim against your household.

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 Cash Assistance through the WV Works / TANF Program is based on current policy and regulations. Some of these regulations state that when an AG (Assistance Group) 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 {West Virginia Income Maintenance Manual §20.3}

The information submitted at your hearing reveals that you received unreported child support income during the period May 1998 through June 2002. Because your child support income made you ineligible to receive cash assistance, the Department is correct to pursue repayment of cash assistance paid during the period June 1998 through August 2000.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to establish and seek collection of a WV Works cash assistance repayment claim in the amount of \$5148.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review

Teresa Smith, SRI, WVDHHR

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

_____,
Claimant,

v.

Action Number: 05-BOR-6782

**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 January 4, 2007 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 originally convened on March 14, 2006 but was continued and reconvened on December 14, 2006 on a timely appeal filed February 28, 2006.

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 (TANF) 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

Teresa Smith, State Repayment Investigator, WVDHHR (Represented the Department on 3/14/06)

Jan Kinser, Criminal Investigator, WVDHHR (Represented the Department on 12/14/06)

Presiding at the Hearing was Thomas E. Arnett, 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 Agency is correct in its proposal to establish and seek collection of an overpayment of WV Works cash assistance.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy 1.2, 10.24, 20.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 Court Order from the Family Court of _____ West Virginia _____ entered on April 20, 2004
- DHS-2 Arrearage Calculation Sheet from the WVDHHR Bureau for Child Support Enforcement
- DHS-3 Benefit Recovery Referral with two Cash Assistance Claims (\$149 & \$4999) dated 9/6/05 accompanied by an AFDC Issuance History – Disbursement
- DHS-4 Notification of Cash Assistance and/or School Clothing Allowance Overpayment (\$149 for the period 6/1/98 to 6/30/98) & Notification of Cash Assistance and/or School Clothing Allowance Overpayment (\$4999 for the period 7/1/98 to 8/31/00)
- DHS-5 WVIMM, Chapter 1.2 & 20.3

Claimant's Exhibits:

- Exhibit-1 Cassette Tape - Audio record of the 3/24/04 hearing before the Family Law Judge.

VII. FINDINGS OF FACT:

- 1) On or about September 7, 2005, the Claimant was notified via two (2) individual Notification of Cash Assistance and/or School Clothing Allowance Overpayment letters (Exhibit DHS-4) that the Department was seeking repayment of cash assistance benefits. One letter indicates an overpayment of \$149 occurred during the period 6/1/98 to 6/30/98 and the other letter states that the Claimant was overpaid \$4999 during the period 7/1/98 to 8/31/00 (Total repayment of \$5148).

- 2) The Department cited Exhibit DHS-1, an ORDER from the Family Court of ██████████ West Virginia, ██████████ entered on April 20, 2004 by the Honorable ██████████ wherein the Claimant was credited with receiving \$19,400 in child support money from her daughter for the period May 1998 through June 2002. The Department's Criminal Investigator testified that the repayment referral was initiated by the Bureau for Child Support Enforcement, hereinafter BCSE, upon completion of an audit (DHS-2).
- 3) The Department submitted Exhibit DHS-3 to show that the Claimant received WV Works cash assistance during the period for which repayment is proposed (June 1998 through August 2000) and testified that the Claimant was not eligible for any of the cash assistance paid to her during this period due to the Claimant receiving direct child support payments. While it was noted that the direct child support payments were not reported by the Claimant, the Department indicated that a criminal investigation was not and will not be initiated because the incident does not meet prosecutable criteria.
- 4) The Claimant contends that the \$19,400 child support credit amount was set by the Family Law Judge during the March 24, 2004 hearing and that the amount wasn't necessarily set based on cash payments, but rather other factors were considered when the payment credit was determined. In addition, the money could have been received outside of the repayment period considered by the Department.
- 5) The Claimant testified that she did not receive any child support payments from her daughter during the period for which the Department is seeking repayment of cash assistance (June 1998 through August 2000). Upon request from Claimant's Counsel, the record remained open for a period of 14-days (December 28, 2006) to allow for the submission of the audio record from the March 24, 2004 hearing. The audio cassette was received in a timely matter (December 26, 2006) and has been identified as Claimant's Exhibit-1.
- 6) According to Claimant's Exhibit-1, the purpose of the March 24, 2004 hearing was to reinstate the child support case and to modify the child support amount. ██████████, appeared on behalf of the West Virginia BCSE and indicated that the BCSE was not prepared to address money owed to the State of West Virginia because the financial records used at the March 24, 2004 hearing were from an audit completed in October 2003 and only dated back to November 2002. Page 4 of DHS-1 reveals that the BCSE was to research medical services paid by the Department to determine what reimbursement, if any, the State is entitled from the Claimant's daughter. While cash assistance reimbursement was not addressed in the March 24, 2004 hearing or in the subsequent Order (DHS-1), there is no language in DHS-1 or a directive in Claimant's Exhibit-1 that would prohibit the State from pursuing repayment of WV Works / TANF cash assistance.
- 7) The audio record from the March 24, 2004 hearing, Claimant's Exhibit-1, reveals that ██████████ (the Claimant's daughter) testified that she paid her mother (the Claimant) a minimum of \$400 in cash every month and sometimes more during the period May 1998 to June 2002 for child support. As a result, the Court Ordered that \$400 per month would be credited to the child support arrears owed by Ms. ██████████

- 8) Policy found in Chapter 10.24.B.2 of the West Virginia Income Maintenance Manual addresses how unearned income is counted and states - The only unearned income disregard or deduction is the first \$50 of redirected child support. The remaining amount and all other unearned household income counts dollar-for-dollar against the WV Works / TANF cash assistance grant amount.
- 9) The West Virginia Income Maintenance Manual, 1.2 states that it is the client's responsibility to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. The client must be instructed that his failure to fulfill his obligation may result in repayment of benefits.
- 10) West Virginia Income Maintenance Manual, Chapter 20.3 states that repayment is pursued for cash assistance overpayments made in the WV Works Program. Policy goes on to say that when an AG (assistance group) 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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy found in the West Virginia Income Maintenance Manual provides a mechanism for which overpayments made through the WV Works / TANF Program can be recouped. The policy states that corrective action is taken by establishing a claim for the overpayment when an assistance group has received more cash assistance than it was entitled.
- 2) The evidence received in this case reveals that a hearing was conducted in the Family Court of ██████████ West Virginia on March 24, 2004 that resulted in the Claimant's daughter (Petitioner) being credited with \$19,400 in child support payments for the period May 1998 through June 2002. While some of the money credited by the Family Law Judge is itemized in the April 20, 2004 Court Order and would have been received outside of the repayment period, Claimant's Exhibit-1 includes testimony from the Claimant's daughter indicating that she paid her mother (the Claimant) a minimum of \$400 in cash per month during the period May 1998 through June 2002.
- 3) The Claimant testified on December 14, 2006 that she did not receive any direct child support payments from her daughter during the period May 1998 through August 2000. The Claimant's testimony, however, is contradictory to the testimony presented by her daughter before the Family Law Judge on March 24, 2004. Credibility becomes an issue as direct child support payments were either received by the Claimant or they were not, credit cannot be given in one case and not in another. The fact of the matter is that the Claimant attended the March 24, 2004 hearing and did not contest her daughter's testimony. Based on that evidence, the Family Law Judge made a finding that the Claimant received \$400 per month during the period for which repayment is pursued.

- 4) The money received by the Claimant through direct child support payments (\$400 per month) counts as unearned income against the WV Works / TANF grant amount in full and clearly establish that the Claimant was not eligible for cash assistance during the period for which cash assistance repayment is being sought by the Department (June 1, 1998 through August 31, 2000).
- 5) While the Honorable Judge [REDACTED] addressed the child support arrearage balance owed by the Claimant's daughter, the Court did not address balances owed to the State of West Virginia or provide any directives that would prohibit the State from pursuing an overpayment of WV Works / TANF cash assistance.
- 6) Based on the evidence, the Department's proposal to establish and seek collection of a WV Works / TANF Repayment Claim for the period June 1, 1998 to June 30, 1998 (\$149) and for the period July 1, 1998 through August 31, 2000 (\$4999) is affirmed.

IX. DECISION:

After reviewing the evidence and the applicable policy and regulations, it is the decision of the State Hearing Officer to **uphold** the proposal of the Department to establish and seek collection of a WV Works / TANF cash assistance repayment claim in the amount of \$5148.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of January, 2007.

**Thomas E. Arnett
State Hearing Officer**