



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
203 East Third Avenue  
Williamson, WV 25661

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

December 20, 2016

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-2851

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Brian Shreve, Repayment Investigator

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

██████████,

**Appellant,**

**v.**

**Action Number: 16-BOR-2851**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**INTRODUCTION**

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (WV DHHR) Common Chapters Manual. This fair hearing was convened on December 8, 2016, on an appeal filed October 14, 2016.

The matter before the Hearing Officer arises from the September 26, 2016 decision by the Respondent to establish a repayment claim against the Appellant's receipt of WV WORKS cash assistance payments as a caretaker-relative for a child in her care.

At the hearing, the Respondent appeared by the Department's Representative, Repayment Investigator Brian Shreve. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were her boyfriend ██████████ and her daughter ██████████. All participants were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Student attendance verification form from ██████████, dated May 9, 2016
- D-2 Student attendance verification form from ██████████, dated May 25, 2016
- D-3 Written Statement from ██████████, dated July 8, 2016
- D-4 Form ES-C/U-5, Cash Assistance Claim Determination
- D-5 WV Income Maintenance Manual (WV IMM), Chapter 15, §15.2
- D-6 WV IMM, Chapter 20, §20.3
- D-7 Written Statement from ██████████, dated October 21, 2016
- D-8 Notice of Cash Assistance and/or School Clothing Allowance Overpayment, dated September 26, 2016

### **Appellant's Exhibits**

- A-1 Handwritten statement from Appellant, notarized on January 9, 2012
- A-2 Consent order from the WV Board of Medicine, dated May 15, 2016
- A-3 Order from the WV Board of Medicine, dated July 11, 2016
- A-4 Handwritten statement from Appellant, notarized on January 9, 2012
- A-5 Handwritten statement from [REDACTED] dated November 28, 2016
- A-6 Handwritten statement from [REDACTED], dated November 30, 2016
- A-7 Agreed order from the Circuit Court of [REDACTED] County, WV, dated August 22, 2007
- A-8 Patient Visit Records from [REDACTED]
- A-9 Grade report and progress notes from [REDACTED] County Schools, [REDACTED]
- A-10 [REDACTED] County Schools Section 504 (Disability) Committee Report, dated June 3, 2013
- A-11 First page of psychological evaluation from [REDACTED], dated March 13, 2013
- A-12 Patient progress notes from [REDACTED], dated November 10, 2016
- A-13 Star Student notice from grade school of Appellant's grandson
- A-14 Newspaper article, "Gardening program grows at local elementary school," newspaper and publishing date not identified

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

### **FINDINGS OF FACT**

- 1) The Appellant has received caretaker-relative cash assistance through the WV DHHR's WV WORKS program on behalf of her grandchild, who shall be identified herein as [REDACTED] since November 2013 or earlier (Exhibit D-4).
- 2) The Department's Representative, a Repayment Investigator, received an anonymous report that the Appellant's grandchild [REDACTED] did not live with her and had not lived with her for some time.
- 3) The child [REDACTED] had attended school in [REDACTED] County, WV, until August 2015, when he transferred to an elementary school in [REDACTED] County, WV (Exhibit D-1). The Appellant had lived in [REDACTED] County, WV, and did not move to [REDACTED] County until October 2015.
- 4) On July 8, 2016, the Appellant's niece made a statement before the Department's Representative regarding the child [REDACTED] living arrangements (Exhibit D-3). On this statement she indicated she and her husband began keeping [REDACTED] in July 2013, and that she and her husband keep him more than 50% of the time.
- 5) On September 22, 2016, the Department's representative completed a Cash Assistance Claim Determination form (Exhibit D-6). He calculated a repayment amount of \$5,640 in WV WORKS benefits to which the Appellant was not entitled, representing the amount of

caretaker-relative cash assistance she received on [REDACTED] behalf from December 2013 through August 2015. He listed the repayment as a “CE” or client error claim.

- 6) The Department sent the Appellant a letter dated September 26, 2016 (Exhibit D-8) informing her of the repayment obligation and amount.
- 7) The Appellant requested a fair hearing to protest the Department’s establishment of this repayment obligation.

### **APPLICABLE POLICY**

The WV Income Maintenance Manual (WV IMM), Chapter 15, §15.2, reads as follows in part,

In order to receive cash assistance, Parents/Caretaker Relatives Medicaid or AFDC-Related Medicaid as a dependent child, the following requirements must be met . . . The child must be living with a specified caretaker relative, who assumes primary responsibility for the child’s care, in a place established as the relative’s home. A specified relative is defined below:

- Natural or adoptive parents;
- Blood relatives, those of half-blood, brothers or sisters, grandparents, great-grandparents . . . uncles or aunts, nephews or nieces, first cousins, first cousins once removed;
- Legal step-parents, step-brothers or step-sisters; step-grandparents . . .

WV IMM, Chapter 20, §20.3 reads as follows in part, “When an [Assistance Group or] 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.”

### **DISCUSSION**

The Appellant requested this fair hearing because she did not believe she should be obligated to repay WV WORKS benefits issued to her as required by policy at WV IMM Chapter 20, §20.3. She argued that she had custody of the child [REDACTED] throughout the repayment period of December 2013 through August 2015.

The Department’s representative presented a statement from the Appellant’s niece, [REDACTED] given to him on July 8, 2016 (Exhibit D-3), that stated she took custody of [REDACTED] on or about July 2013. According to the statement, she reported [REDACTED] had not spent a night away from her home for 16 months, and the Appellant “rarely” called to see if he was doing well.

The Department’s representative presented a second statement dated October 21, 2016, from a certain [REDACTED] (Exhibit D-7), whose relationship to the rest of the family is unknown. According to this statement, [REDACTED] stated she was in [REDACTED] office in February 2015, and overheard [REDACTED] call [REDACTED] “Mom” and [REDACTED] “Dad.”

The Appellant provided evidence that she was awarded custody of [REDACTED] by the Circuit Court of [REDACTED] County, WV, in August 2007 (Exhibit A-7). She testified that she has kept him since that time, but she did allow him to spend some time with [REDACTED] and [REDACTED]. She testified that he spent some nights in the [REDACTED] home and went on vacation with them occasionally.

The Appellant provided patient visit records from [REDACTED] indicating she took [REDACTED] to his pediatrician's visits several times throughout the repayment period (Exhibit A-8). She provided progress notes from [REDACTED] pediatric dentist (Exhibit A-12) indicating she took [REDACTED] to dentist's visits throughout the repayment period as well. She provided a copy of the first page of a psychological evaluation (Exhibit A-11) indicating the Appellant took [REDACTED] to this evaluation.

The Department's assertion that the Appellant did not keep [REDACTED] during the repayment period is based upon the statement from [REDACTED] who did not appear for the hearing. Also, the Department based its case upon a statement from a [REDACTED] given in October 2016, recalling an overheard conversation from February 2015. The Appellant's assertion that she kept [REDACTED] throughout the repayment period, other than the occasional overnight stay or vacation trip, is based upon a Circuit Court order and reports from health care professionals who examined [REDACTED] stating the Appellant brought him to several office visits.

The preponderance of evidence indicates that [REDACTED] lived with the Appellant for the majority of the time from December 2013 through August 2015. The Department should not have imposed a repayment claim against the Appellant's receipt of WV WORKS benefits.

### **CONCLUSION OF LAW**

The WV Income Maintenance manual, in Chapter 20, §20.3, requires the establishment of WV WORKS repayment claims whenever there has been an excessive issuance of WV WORKS benefits. However, the preponderance of evidence does not support the Department's position that the Appellant did not have custody of the child for whom she received WV WORKS caretaker-relative cash assistance from December 2013 through August 2015. As such, the Department did not correctly establish a WV WORKS repayment claim against the Appellant for \$5,640.

### **DECISION**

It is the decision of the State Hearing Officer to REVERSE the Department's decision to establish a WV WORKS repayment claim totaling \$5,640 against the Appellant.

**ENTERED this 20<sup>th</sup> Day of December 2016.**

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**Stephen M. Baisden  
State Hearing Officer**