

STATE OF WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin Governor BOARD OF REVIEW 203 East Third Avenue Williamson, WV 25661 **Karen L. Bowling Cabinet Secretary**

December 20, 2016



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

Dear :

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.

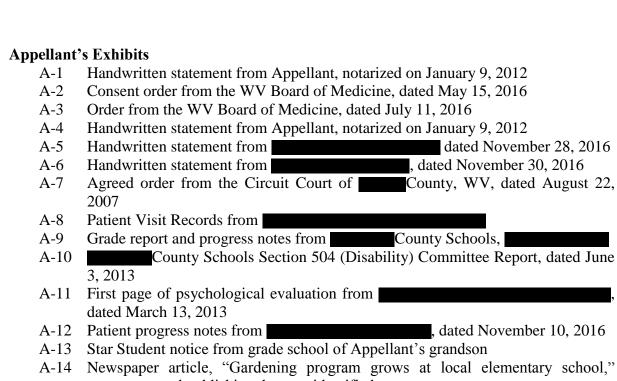
The matter before the Hearing Officer arises from the September 26, 2016 decision by the Respondent to establish a repayment claim against the Appellant's receipt of WV WORKS cash assistance payments as a caretaker-relative for a child in her care.

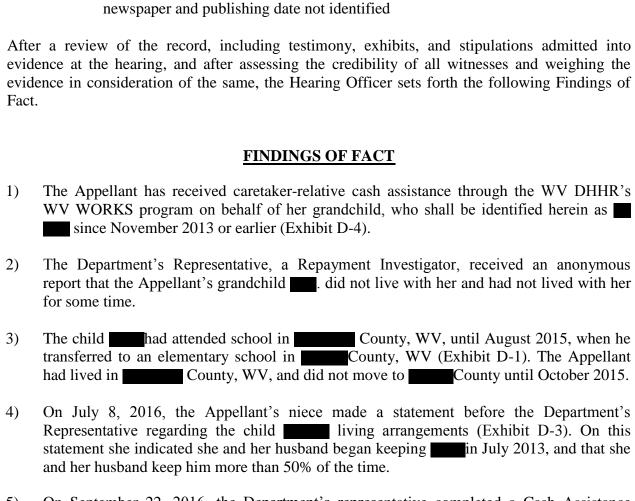
At the hearing, the Respondent appeared by the Department's Representative, Repayment Investigator Brian Shreve. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were her boyfriend and her daughter All participants were sworn and the following documents were admitted into evidence.

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	

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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

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caretaker-relative cash assistance she received on 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 throughout the repayment period of December 2013 through August 2015.

The Department's representative presented a statement from the Appellant's niece, given to him on July 8, 2016 (Exhibit D-3), that stated she took custody of on

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

or about July 2013. According to the statement, she reported had not spent a night away from her home for 16 months, and the Appellant "rarely" called to see if he was doing well.

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County, WV, in August 2007 (Exhibit A-7). She test time, but she did allow him to spend some time with that he spent some nights in the home and went on variations.	tified that she has kept him since that and . She testified	
The Appellant provided patient visit records from his pediatrician's visits several times throughout the reprovided progress notes from pediatric dentist (Exhidentist's visits throughout the repayment period as well. She a psychological evaluation (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhidentist's visits throughout the repayment period as well. She a psychological evaluation (Exhibit A-11) indicating the Appellant provided patient visit records from provided progress notes from pediatric dentist (Exhidentist's visits throughout the repayment period as well. She a psychological evaluation (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit A-11) indicating the Appellant provided progress notes from pediatric dentist (Exhibit	payment period (Exhibit A-8). She bit A-12) indicating she took to e provided a copy of the first page of	
The Department's assertion that the Appellant did not keep based upon the statement from who did not be based upon the statement from a an overheard conversation from February 2015. The Appellant broughout the repayment period, other than the occasional based upon a Circuit Court order and reports from health castating the Appellant brought him to several office visits.	given in October 2016, recalling ellant's assertion that she kept all overnight stay or vacation trip, is	
The preponderance of evidence indicates that lived we the time from December 2013 through August 2015. The December claim against the Appellant's receipt of WV WO	epartment should not have imposed a	
CONCLUSION OF LAW		
The WV Income Maintenance manual, in Chapter 20, §20. WORKS repayment claims whenever there has been an elementis. However, the preponderance of evidence does not that the Appellant did not have custody of the child for caretaker-relative cash assistance from December 2013 to Department did not correctly establish a WV WORKS repay \$5,640.	excessive issuance of WV WORKS of support the Department's position whom she received WV WORKS hrough August 2015. As such, the	
<u>DECISION</u>		
It is the decision of the State Hearing Officer to REVI establish a WV WORKS repayment claim totaling \$5,640 as	-	
ENTERED this 20 th Day of December 2016.		
_	n M. Baisden Jearing Officer	

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