



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

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Cabinet Secretary**

**Board of Review
State Capitol Complex
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**M. Katherine Lawson
Inspector General**

February 16, 2018



RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-2863

Dear Ms. [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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Jennifer Gatewood, Department Representative

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES

BOARD OF REVIEW

██████████,

Appellant,

v.

Action Number: 17-BOR-2863

**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' Common Chapters Manual. This fair hearing was convened on January 9, 2018, on an appeal filed November 20, 2017.

The matter before the Hearing Officer arises from the Respondent's November 15, 2017 decision to terminate the Appellant's WV WORKS benefits.

At the hearing, the Respondent appeared by Jennifer Gatewood. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----|---|
| D-1 | Notice of Decision
Date mailed: November 15, 2017 |
| D-2 | Rights and Responsibilities form (DFA-RR-1)
Date signed: June 13, 2017 |
| D-3 | West Virginia Income Maintenance Manual (WVIMM) excerpts
Chapter 1 – Application/Redetermination Process
Chapter 3 – Eligibility Determination Groups |

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 was a recipient of WV WORKS benefits as a “caretaker relative” for a child in her care.
- 2) The biological parent of this child moved into the home with the Appellant and the child in May 2017.
- 3) By notice dated November 15, 2017, the Respondent advised the Appellant that her WV WORKS benefits would be terminated because the “child is not under the care of a specified relative.” (Exhibit D-1)

APPLICABLE POLICY

The West Virginia Income Maintenance Manual (WVIMM), at §3.4.1.A, specifies the individuals that must be included in a WV WORKS assistance group (AG). This includes the parent of a child when that parent lives with the child.

At §3.4.1.C, this policy identifies the individuals that may choose to be included in a WV WORKS AG. For caretaker relatives, this option hinges on the presence of the parent. This policy reads, in pertinent part, “The following individuals may choose to be included in the AG: Caretaker relatives, who are not natural or adoptive parents, and stepparents **when the parent is not in the home...**” (emphasis added)

DISCUSSION

The Appellant requested a hearing to contest the decision of the Respondent to terminate her WV WORKS benefits based on a change in household composition. The Respondent must prove, by a preponderance of the evidence, that the change in the Appellant’s household composition required termination of WV WORKS benefits.

The Appellant was receiving WV WORKS benefits intended for the care of a child for whom she was acting as a “caretaker relative.” Policy allows for such an arrangement when the biological parent is not present. The biological parent moved in with the Appellant in May 2017. The Appellant testified that the biological mother of the child maintains a physical address at her home and keeps her belongings at the Appellant’s home, but only lives there a few days per month. The testimony regarding the frequency of the mother’s presence is unconvincing. The Respondent discovered the presence of the mother through an address search and placed her in the Appellant’s case after the Appellant agreed that the mother was there.

The Respondent has established by a preponderance of the evidence that the biological mother of the child is present in the Appellant's home and must be included in her WV WORKS AG. This household change also requires the WV WORKS case to be structured around the biological parent, so the Respondent was additionally correct to terminate the WV WORKS benefits of the Appellant.

CONCLUSIONS OF LAW

- 1) Because the household of the Appellant includes both a child and the biological parent of that child, the Appellant cannot choose to be included in the WV WORKS assistance group with that child.
- 2) Because the Appellant receives WV WORKS as a caretaker relative, the Respondent must terminate the WV WORKS case as a result of the change in the Appellant's household composition.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's termination of the Appellant's WV WORKS benefits.

ENTERED this ____ Day of February 2018.

Todd Thornton
State Hearing Officer