



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

February 15, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-2951

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,

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

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

cc: Robert Meade, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 18-BOR-2951

**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 February 12, 2019, on an appeal filed December 26, 2018.

The matter before the Hearing Officer arises from the November 30, 2018 decision by the Respondent to terminate benefits under the WV WORKS Program. At the hearing, the Respondent appeared by Robert Meade, Family Support Specialist, WVDHHR. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, friend of the Appellant. All witnesses were sworn and the following documents were admitted into evidence.

Respondent's Exhibits:

- D-1 Notice of Decision dated November 30, 2018
- D-2 West Virginia Income Maintenance Manual Chapter 3.4.3 and Chapter 4, Appendix A
- D-3 Case Summary, Case Benefit Summary, Unearned Income, Cash Budget and Case Comments (screenshots from Respondent's computer system)
- D-4 Statement from Chase Bank for the period of October 19, 2018 through November 20, 2018

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.
- 2) On November 30, 2018, the Respondent sent the Appellant a Notice of Decision (D-1), indicating that her WV WORKS benefits would stop effective November 30, 2018 because her income was excessive.
- 3) The Appellant's checking account statement from Chase Bank (D-4) lists four deposits on October 29, 2018 for \$990, \$594, \$495 and \$321.75, and the Respondent considered the deposits as unearned income the Appellant received from another person. These deposits total \$2,400.75.
- 4) The Respondent contends that funds the Appellant received from another person averaged \$1,730.75 per month. No additional bank statements were produced by the Respondent during the hearing, but Case Comments (D-3) indicate that the case worker averaged deposits on bank statements from May 2018-November 2018.
- 5) The Respondent contends that the Appellant also has countable child support income of \$101.06 and a countable Housing and Urban Development (HUD) supplement of \$124 per month.
- 6) The Respondent calculated the Appellant's total countable monthly income as \$1,955.06.
- 7) The income limit for a two-person WV WORKS Assistance Group is \$331 (D-2).

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 3.4.3 (D-2) states that countable income for the WV WORKS Program is compared to the income limits for the number in the Assistance Group to determine eligibility and the amount of the benefit.

West Virginia Income Maintenance Manual Chapter 4, Appendix A (D-2) states that the income limit for a two-person WV WORKS Assistance Group is \$331.

West Virginia Income Maintenance Manual Chapter 9.3.1. states that a client must receive advance notice in all situations involving adverse actions except those described in the Adverse Actions Not Requiring Advance Notice section below. The advance notice requirement is that notification be mailed to the client at least 13 days prior to the first day of the month in which the benefits are affected.

West Virginia Income Maintenance Manual Chapter 9.3.1.A states that the closure of a WV WORKS case is an adverse action that requires advance notice.

West Virginia Income Maintenance Manual Chapter 9.3.1.B states that the following are adverse actions that do not require advance notice:

- When adverse action occurs as a result of a mass change initiated, such as:
 - The annual updates of SNAP allotments or deductions;
 - The annual Retirement, Survivors, and Disability Insurance (RSDI)/SSI updates;
 - A change in the WV WORKS benefit levels; or
 - A change in the Medically Needy Income Levels (MNIL).
- When the client has signed a DFA-NL-5, Waiver of 13-Day Advance Notice, to waive his right to a 13-day advance notice. See Section 9.3.
- For SNAP only: when the benefit is terminated or reduced as a result of a redetermination.

DISCUSSION

Policy stipulates that the closure of a WV WORKS case is an adverse action that requires advance notice.

The Respondent sent the Appellant a Notice of Decision on November 30, 2018, informing her that her WV WORKS benefits would stop on November 30, 2018. Therefore, the Respondent failed to follow the 13-day advance notice policy.

The Appellant and her friend, [REDACTED], testified that Ms. [REDACTED] had given the Appellant money to deposit into her account, so that the funds could be sent to Ms. [REDACTED] family in [REDACTED]. The Appellant testified that she did not personally utilize the funds Ms. [REDACTED] asked her to deposit, and was unaware that the money would be counted as income toward her WV WORKS benefits. She indicated that she no longer deposits Ms. [REDACTED] money into her account.

As the Respondent's decision to terminate WV WORKS benefits effective November 30, 2018, did not meet adverse action notification requirements, the closure cannot be affirmed. Benefits should be reinstated for December 2018, January 2019 and February 2019, and the Respondent is directed to verify the Appellant's income for ongoing months based on her current situation. If the Respondent determines that the Appellant's income is excessive for ongoing benefits, new notification must be provided to the Appellant to satisfy adverse action requirements.

CONCLUSION OF LAW

Based on information provided during the hearing, the Respondent's decision to terminate WV WORKS benefits is REVERSED. The case is REMANDED to the Respondent to re-evaluate the Appellant's income and ensure that proper procedures are followed prior to any subsequent case closure.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Respondent's action to terminate WV WORKS benefits and REMAND the case to the Respondent for re-evaluation of income.

ENTERED this 15th Day of February 2019.

**Pamela L. Hinzman
State Hearing Officer**