



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801**

**Jolynn Marra
Interim Inspector General**

September 11, 2020

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 20-BOR-1965

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Birdena Porter, [REDACTED] County DHHR

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

████████████████████,

Appellant,

v.

Action Number: 20-BOR-1965

**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 August 20, 2020, on an appeal filed August 4, 2020.

The matter before the Hearing Officer arises from the July 28, 2020, decision by the Respondent to establish a repayment claim of WV WORKS cash assistance benefits against the Appellant.

At the hearing, the Respondent appeared by Birdena Porter, Repayment Investigator. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notification of Cash Assistance Overpayment dated July 28, 2020 (Child Support Incentive)
- D-2 Notification of Cash Assistance Overpayment dated July 28, 2020 (Cash Assistance)
- D-3 Notification of Cash Assistance Overpayment dated July 28, 2020 (Child Support Incentive)
- D-4 Cash Assistance Claim Determination Form (Cash Assistance)
- D-5 Cash Assistance Claim Determination Form (Child Support Incentive)
- D-6 Request for WV WORKS Cash Assistance (DFA-RFA-1) signed October 10, 2018
- D-7 Rights and Responsibilities Form signed October 10, 2018
- D-8 Combined Application and Review Form (DFA-2) dated July 14, 2020
- D-9 Rights and Responsibilities Form (DFA-RR-1) signed July 14, 2020

D-10 West Virginia Income Maintenance Manual §1.3.1.A.2

D-11 West Virginia Income Maintenance Manual §§1.5 and 1.5.6

Appellant's Exhibits:

None

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 applied for WV WORKS cash assistance benefits on October 18, 2018 for herself and her two children.
- 2) The Appellant signed a Request for WV WORKS Cash Assistance form and the Rights and Responsibilities form on October 18, 2018 (Exhibits D-6 and D-7).
- 3) On July 15, 2019, the Appellant completed an eligibility review and signed the Combined Application and Review Form.
- 4) The Respondent contended that the Appellant did not sign the WV WORKS application form on October 18, 2018 and was ineligible to receive WV WORKS cash assistance until July 15, 2019, at which time she signed the Combined Application and Review Form.
- 5) The Respondent established a repayment claim for WV WORKS cash assistance benefits of \$1,222 that the Appellant received from April, May, June and July 1 through July 15, 2019 (Exhibits D-2 and D-4).
- 6) The Respondent established a repayment claim for Child Support Incentive that the Appellant received in April 2019 and June 2019 of \$50 (Exhibits D-1, D-3 and D-5).

APPLICABLE POLICY

West Virginia Income Maintenance Manual §1.3.1.A.3 states when the applicant has completed the application, and there is a technical failure that prevents printing the DFA-2, Form DFA-5 must be signed by the applicant, attached, and filed in the case record with the subsequently printed DFA-2. The DFA-RR-1 must also be completed and signed. He or she must not be required to return to the office to sign the DFA-2 when a DFA-5 has been signed.

West Virginia Income Maintenance Manual §1.5.2 states the WV WORKS application is complete, when the client signs a DFA-2 or DFA-5 which contains, at a minimum, his name and address. If the client chooses not to sign the DFA-2, the application is considered incomplete and

the Worker must take appropriate eligibility system action to deny the application, complete client notification, and record in case comments that the client did not want to sign the application and the reason for his decision. The Worker must encourage the client to sign the application so there is no misunderstanding that he was denied the right to apply.

West Virginia Income Maintenance Manual §1.5.3 states the date of the WV WORKS application is the date that the DFA-2, which contains, at a minimum, the applicant's name and address, is signed. Benefits are prorated from the date of application when all other eligibility requirements are met. Because approval depends upon making the application, attending orientation, and completing a Personal Responsibility Contract (PRC) / Self-Sufficiency Plan (SSP) as well as providing verifications, all of which may not be available to the client on the date of application, form DFA-RFA-1 is available to protect the date of application for proration purposes. There must be a full application made subsequent to each DFA-RFA-1. If the applicant fails to follow through with the application, the Worker must deny the DFA- RFA-1 in the eligibility system. The DFA-RFA-1 may only be used when a DFA-2 is not completed at the time the client expresses an intent to apply for WV WORKS.

West Virginia Income Maintenance Manual §11.3 states repayment is pursued for cash assistance overpayments made under the former Aid to Families with Dependent Children/Unemployed Parent (AFDC/U) Program, WV WORKS, Child Support Incentive (CSI), Temporary Assistance for Needy Families (TANF) Program, WV WORKS School Clothing Allowance, and the West Virginia School Clothing Allowance. When an assistance group (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.

West Virginia Income Maintenance Manual §11.3.3.A states that agency errors include a failure to take prompt action. The first month of overpayment is the month the change would have been effective had the agency acted properly.

DISCUSSION

Pursuant to policy, if an 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 assistance group was entitled.

The Respondent established a repayment claim of \$1,222 in cash assistance benefits and \$50 in Child Support Incentive payments that were issued to the Appellant in error. The Respondent contended that the WV WORKS application, form DFA-2, was not signed by the Appellant and as a result, was not eligible to receive cash assistance until form DFA-2 was signed during an eligibility review on July 15, 2019. Although the Appellant received WV WORKS cash assistance beginning in October 2018, the Respondent is only seeking repayment for cash assistance payments issued in April, May, June and July 1 through 15, 2019. The Respondent is also seeking repayment of Child Support Incentive payments that were issued to the Appellant in April and June 2019.

The Appellant testified that she signed several forms during the October 2018 application process as directed by her caseworker. The Appellant argued that she had not applied for WV WORKS previously, and could not have known which of the forms she signed that date was or was not the application. The Respondent testified that the DFA-2 had not been printed on October 10, 2018, and therefore not available to be produced as evidence to show that the Appellant's signature was missing.

The burden of proof that the Appellant was ineligible to receive WV WORKS and CSI benefits during the established repayment period rests with the Respondent. There was no evidence provided to support the Respondent's claim that the Appellant failed to sign the DFA-2, and without the actual document to corroborate the Respondent's assertion that the DFA-2 was not signed by either the Appellant or the caseworker, it is impossible to determine what transpired during the application process over two years ago.

Whereas the preponderance of evidence failed to establish that the Appellant was ineligible to receive WV WORKS and CSI benefits from April 2019 through July 2019, the Appellant is not responsible to repay the benefits issued during that time.

CONCLUSIONS OF LAW

- 1) Policy requires that all WV WORKS and CSI benefits issued in error must be recouped.
- 2) The Respondent contended the Appellant did not sign the application, form DFA-2, during the October 18, 2018 application process and was ineligible to receive WV WORKS and CSI benefits until form DFA-2 was signed in July 2019.
- 3) The Respondent failed to provide corroborating evidence that the Appellant did not sign the DFA-2 and was therefore ineligible to receive WV WORKS and CSI benefits.
- 4) The Appellant is not liable to repay WV WORKS and CSI benefits that were issued from April 2019 through July 2019.

DECISION

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to establish a repayment claim of WV WORKS and Child Support Incentive benefits.

ENTERED this 11th day of September 2020.

Kristi Logan
State Hearing Officer