



**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 2, 2020

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 20-BOR-1991

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-1991

**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 26, 2020, on an appeal filed August 10, 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
- D-2 Employment Statement from ██████████
- D-3 Combined Application and Review Form dated August 10, 2018
- D-4 Cash Assistance Claim Determination Form
- D-5 Drug Use Questionnaire (Form DFA-WVW-DAST-1) dated August 10, 2018
- D-6 Employment Income Screen Print
- D-7 WV WORKS Accuracy Findings dated May 4, 2020

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 for herself and her two children on October 10, 2018.
- 2) The Appellant completed and signed the Drug Use Questionnaire on October 10, 2018, but failed to answer question 11, "Have you been convicted of a drug-related offense in the last three years?" (Exhibit D-5).
- 3) The Respondent approved WV WORKS cash assistance benefits for an assistance group of three.
- 4) The Appellant started working for [REDACTED] in September 2019 and provided an employer statement to anticipate her earnings (Exhibit D-2).
- 5) The Appellant chose to receive Employer Assistance Program (EAP) benefits from October 2019 through March 2020 when the employment income exceeded the WV WORKS cash assistance payment.
- 6) The Appellant's case underwent a case review by the Respondent's Quality Control division in May 2020 (Exhibit D-7).
- 7) The Respondent contended that the Appellant was ineligible to receive WV WORKS cash assistance for her failure to answer question 11 on the Drug Use Questionnaire at application and was subsequently ineligible to receive EAP benefits.
- 8) The Respondent established an agency error repayment claim of WV WORKS cash assistance benefits that were issued from April 2019 through March 2020 of \$2,502 (Exhibit D-4).

APPLICABLE POLICY

West Virginia Income Maintenance Manual §18.7.17 states all adult and emancipated minor applicants who would be included in the WV WORKS Assistance Group (AG) must complete a Drug Use Questionnaire, DFA-WVW-DAST-1, or are ineligible for this benefit. An applicant for these purposes means any individual who has not received WV WORKS for a full calendar month. Receipt of EAPs is considered a supportive service payment and is not considered WV WORKS payment for this purpose. This questionnaire must be completed within ten business days of the initial contact showing interest in applying for this benefit in addition to all other eligibility requirements. Any applicant who provides false information on the Drug Use Questionnaire is ineligible for WV WORKS assistance for 12 months. The false information must be from evidence

and not hearsay. Any individual who scores one or more points or answers “Yes” to question eleven must be referred for drug testing; all other applicants are treated in the same manner as any other WV WORKS applicant. Responses of N/A on the DFA-WVW-DAST-1 are not counted as a point and must not be used towards the total points. The Case Manager must add any individual who answers “Yes” to question eleven and who has a negative drug test to the WV WORKS AG. These individuals are added retroactive to the date of application for WV WORKS.

West Virginia Income Maintenance Manual §18.22 states that work-eligible individuals may choose between two transitional benefit options any time the WV WORKS case is closed due to employment and the participant has reported employment within ten days of the employment begin date. The options are described below:

- Option 1 – This option is a continuation of support services and payments any time a WV WORKS benefit is closed due to employment which meets the requirements outlined below. Services include case management; support service payments; continuation of and payment for activities such as, but not limited to, job search, job readiness, and skills training. Employed former WV WORKS participants must apply to receive continued support service payments.
- Option 2 – This option is the West Virginia Employment Assistance Program (EAP). This program enables the employed former WV WORKS participant to continue to receive the Temporary Assistance for Needy Families (TANF) payment he received prior to becoming employed by use of a 100% earned income disregard for the EAP period. The family must elect to receive the EAP payment instead of continued support service payments. Participation hours for this employment may be projected for up to six months by using either pay stubs or a written statement from the employer. If it is apparent that the hours may vary substantially, the EAP participant must provide a time sheet or pay stubs each month to verify the hours. A PRC or SSP is not required for the transitional benefit period.

West Virginia Income Maintenance Manual §11.3 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.2, 11.3.3.A.2 and 11.3.3.B states there are three types of repayment claims: agency error, client error and fraud claims. Agency errors include:

- Failure to take prompt action - The first month of overpayment is the month the change would have been effective had the agency acted promptly
- Computation error - The first month of overpayment is the month the incorrect allotment was effective.

DISCUSSION

Pursuant to policy, when an assistance group was issued more WV WORKS cash assistance benefits than it was entitled to receive, corrective action is taken by establishing a repayment claim

to recoup the overpaid benefits. Repayment claims are established regardless if the overpayment was the result of an agency error or client error.

The Respondent established a repayment claim of WV WORKS cash assistance benefits against the Appellant that were issued from April 2019 through March 2020 when it was discovered that the Appellant failed to answer question number 11 on the Drug Use Questionnaire. Policy stipulates that all adult applicants included in the WV WORKS assistance group must complete the Drug Use Questionnaire or are the adult applicant is ineligible for the benefit.

The Appellant applied for WV WORKS benefits in October 2018. The Appellant completed the Drug Use Questionnaire on October 10, 2018, however, question number 11 was left blank. Failure to complete the Drug Use Questionnaire in its entirety rendered the Appellant ineligible for WV WORKS cash assistance, and the subsequent approval of Employer Assistance Program benefits.

Although the oversight by the Respondent to ensure that all questions on the Drug Use Questionnaire had been answered fully prior to the approval of WV WORKS cash assistance benefits resulted in the overpayment, all overpaid benefits must be recouped, regardless of agency or client error.

Whereas the Appellant was ineligible to receive WV WORKS cash assistance benefits from April 2019 through March 2020, the Respondent correctly established a repayment claim of \$2,502.

CONCLUSIONS OF LAW

- 1) When an assistance group has been issued more WV WORKS cash assistance benefits than it was entitled to receive, corrective action is taken by establishing a repayment claim to recoup the overpaid benefits.
- 2) As the result of an agency error, the Appellant was ineligible to receive WV WORKS benefits from April 2019 through March 2020 for a failure to complete the Drug Use Questionnaire.
- 3) The Respondent's establishment of a repayment claim of WV WORKS benefits against the Appellant was correct.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to establish a repayment claim of WV WORKS benefits for which the Appellant was not eligible to receive that were issued from April 2019 through March 2020.

ENTERED this 2nd day of September 2020.

Kristi Logan
State Hearing Officer