



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 558-2278 Fax: (304) 558-1992**

**Jolynn Marra
Interim Inspector General**

January 29, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 19-BOR-2722

Dear Mr. [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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

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

cc: Brian Shreve, WV DHHR, [REDACTED] County

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

██████████,

Appellant,

v.

Action Number: 19-BOR-2722

**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 December 10, 2019, on an appeal filed November 18, 2019.

The matter before the Hearing Officer arises from the November 8, 2019 decision by the Respondent to seek repayment of West Virginia Works (WV Works) Caretaker Cash Assistance.

At the hearing, the Respondent appeared by Brian Shreve, Repayment Investigator, WVDHHR. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 eRAPIDS system screenshot printout of Case Summary dated July 18, 2019 through September 23, 2019
- D-2 West Virginia Department of Health and Human Resources (DHHR) Benefit Recovery Referral dated November 19, 2019
- D-3 DHHR Cash Assistance Claim Determination, DHHR Benefit Recovery Referral dated September 26, 2019, Case Household Information dated October 04, 2019, Case Members History dated October 04, 2019, WV WORKS Issuance History Disbursement dated October 04, 2019, WV WORKS Grant Determination/DCA Gross Test dated October 04, 2019, eRAPIDS system screenshot printout of Case Summary dated April 17, 2018 through January 23, 2019, and eRAPIDS system screenshot printout of Case Summary dated July 18, 2019 through September 23, 2019
- D-4 West Virginia Income Maintenance Manual (WV IMM) §3.3.2
- D-5 WV IMM §11.3

- D-6 eRAPIDS system screenshot printout of Case Summary dated May 16, 2018 through February 01, 2019
- D-7 DHHR Claims for an Individual form dated November 19, 2019
- D-8 DHHR Notification of Cash Assistance and/or School Clothing Allowance Overpayment dated November 08, 2019, WV IMM §§2.2.2.B – 2.2.3.B.1

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 received WV Works Caretaker/Relative benefits for Child, [REDACTED] (Exhibits D-6 and D-7)
- 2) The Appellant is a specified relative of Child [REDACTED]
- 3) The Appellant was the primary provider of Child [REDACTED]
- 4) Child [REDACTED] lived with the Appellant part-time from October 2018 through October 2019.
- 5) On September 23, 2019, the Appellant's WV Works supervisor contacted the Appellant regarding the living arrangements of [REDACTED]. It was reported that the child was not residing in the Appellant's home a majority of the time and benefits were closed. (Exhibits D-1 and D-3)
- 6) As a result of the reported information, a repayment investigation was completed, and the Respondent established a Cash Assistance repayment claim against the Appellant in the amount of \$3,635 for the time period of October 1, 2018 through October 31, 2019. (Exhibits D-3 and D-7)
- 7) On November 08, 2019, the Respondent issued a Notification of Cash Assistance and/or School Clothing Allowance Overpayment due to a client error in the amount of \$3635. (Exhibit D-8)
- 8) On an unknown date, the Respondent determined that the case worker erred in determining WV Works/Cash Assistance Caretaker Relative benefits. As a result of this, the claim was then determined to be that of an agency error.

APPLICABLE POLICY

West Virginia Income Maintenance Manual §1.2.4 reads:

The client's responsibility is to provide complete and accurate information about his or her circumstances so that the worker can make a correct determination about his or her eligibility.

West Virginia Income Maintenance Manual §3.3.2 reads, in part:

The child must be living with a specified relative, who assumes primary responsibility for the child's care, in a place established as the relative's home. In order for an individual to be a caretaker relative, he must be a specified relative. Legal custody or guardianship of a child does not, in itself, qualify a person as a specified relative.

West Virginia Income Maintenance Manual §3.4.1.A reads, in part:

The custodial parent is the one with whom the child(ren) lives more than 50% of the time in a given month. The custodial parent of any child may change from month to month. If the child lives with each parent exactly 50% of the time, the parents must decide who the custodial parent is.

West Virginia Income Maintenance Manual §11.3.3.A.1 reads, in part:

The first month of overpayment is the month the change would have been effective had the agency acted properly is considered an Agency Error.

West Virginia Income Maintenance Manual §11.2.3.A.2 reads:

When the client fails to provide accurate or complete information, the first month of the overpayment is the month the incorrect, incomplete, or unreported information would have affected the benefit level, considering reporting and noticing requirements.

DISCUSSION

The Appellant was receiving WV Works Caretaker/Relative benefits for one child, [REDACTED]. Policy allows for such an arrangement when the biological parent is not present. The Respondent must prove by a preponderance of evidence that the change in the Appellant's household composition requires repayment of the WV Works Caretaker/Relative benefit.

In September 2019, the DHHR received information that child [REDACTED], may not be residing in the Appellant's home the majority of the time. On September 23, 2019, the Respondent's WV Works supervisor contacted the Appellant regarding the living arrangements of the child. The Appellant notified the Respondent that because the child was attending [REDACTED] County Public Schools, she

resided with them on Fridays and Saturdays, and was returned to the residence of the maternal grandparents' home on Sundays. The Appellant also reported that when ██████ County Schools were not in session, ██████ would stay until Monday. The Department then determined that the child was not residing in the Appellant's home the majority of the time, which resulted in a closure of benefits.

Because of the reported change in living arrangements, a repayment investigation was completed, which resulted in the Respondent establishing a WV Works/Cash Assistance Claim Determination against the Appellant for the months of October 01, 2018 through October 31, 2019. The Appellant was notified of an overpayment in the amount of \$3635 in a Notification of Cash Assistance and/or School Clothing Allowance Overpayment letter dated November 08, 2019.

During the hearing, the Respondent testified that on an unknown date, it was discovered that the case worker erred in determining WV Works Caretaker/Relative benefits. Case comments in the eRAPIDS electronic file system, dated October 01, 2018, noted at the time of application, the Appellant did not have child ██████ a majority of the time, but the worker failed to take appropriate action on the case. The Respondent testified that because the alleged over-issuance was a result of the worker's error, the Respondent changed the claim from a "client error" to an "agency error".

At the time of application, the Appellant reported child ██████, as living in their home 3-4 days per week. The remainder of the week was spent in the home of the maternal grandmother in order for ██████ to attend ██████ County Public Schools. The Appellant also testified that he transported the child to all medical appointments. The Appellant's wife, Ms. ██████ provided testimony indicating the Appellant assumed primary responsibility for ██████. Ms. ██████ testified that she and the Appellant purchased all food, shoes, clothing, school supplies, toys, and bed for the child. Ms. ██████ also testified that bags of groceries were provided to the child's maternal grandparents when transitioning between homes.

When determining eligibility for the WV Works Caretaker/Relative benefits, the Department alludes to the Appellant as a "custodial parent" as the basis of eligibility/repayment for this benefit. In order to assume the role of a custodial parent, policy stipulates that a child must reside with the Appellant the majority of the time. However, WV Works Caretaker/Relative benefits policy stipulates that a dependent child must be living with a specified relative, who assumes primary responsibility for the child's care, in a place established as the relative's home. Policy further stipulates that legal custody or guardianship of a child does not, in itself, qualify a person as a specified relative. The WV Works Caretaker/Relative benefits policy does not list a residency time frame in order to obtain eligibility for this benefit.

While the child, ██████, may not reside in the Appellant's home the majority of the time, the Appellant provided credible testimony that he does, in fact, assume primary responsibility for her, which is the condition outlined in policy to receive Caretaker/Relative benefits.

CONCLUSIONS OF LAW

- 1) The Appellant assumed primary responsibility for child, ██████, who lived with the Appellant part-time.

- 2) Policy does not establish a residency time frame in order to obtain eligibility for the WV Works Caretaker/Relative benefits.
- 3) Evidence failed to establish the Appellant is responsible for repayment in the amount of \$3,635.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's action to seek repayment of WV Works Caretaker/Relative benefits for the time period of October 1, 2018 through October 31, 2019.

ENTERED this _____ day of January 2020.

Angela D. Signore, State Hearing Officer