



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

Bill J. Crouch
Cabinet Secretary

Board of Review
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Jolynn Marra
Interim Inspector General

November 19, 2021

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-2016

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter. In arriving at a decision, the Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson, MLS
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

CC: Christina Saunders, Investigations and Fraud Management

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

██████████,

Appellant,

v.

ACTION NO.: 21-BOR-2016

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on October 6, October 20, and October 26, 2021 on an appeal filed with the Board of Review on August 31, 2021.

The matter before the Hearing Officer arises from the Respondent's July 28, 2021 decision to establish a WV WORKS repayment claim against the Appellant.

At the hearing, the Respondent appeared by Wanda Morgan, Investigations and Fraud Management. The Appellant appeared *pro se*. Both witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Investigations and Fraud Management (IFM) Letters
- D-2 eRAPIDS Case Summary
- D-3 eRAPIDS Case Benefit Summary
- D-4 Non-Financial Eligibility Determination
- D-5 Case Comments
- D-6 DHHR Request for WV WORKS Cash Assistance, signed January 30, 2019
- D-7 Rights and Responsibilities, signed February 6, 2019
- D-8 Tri-State Pharmacy Record; DHHR Drug Use Questionnaire, signed February 6, 2019; WV WORKS Self-Sufficiency Form; Resource List; WV WORKS Personal Responsibility Contract (PRC), signed January 30, 2019; Self-Sufficiency Plan, signed February 25, 2019; and Orientation, signed January 30, 2019

- D-9 Tri-State Pharmacy Record; DHHR Drug Use Questionnaire, signed February 6, 2019; WV WORKS Self-Sufficiency Form; Resource List; WV WORKS Personal RRC, signed January 30, 2019; Self-Sufficiency Plan, signed February 25, 2019; Orientation, signed January 30, 2019; Release of Confidential Applicant and Recipient Information, signed February 25, 2021; and Referral for Training Service, signed February 25, 2019
- D-10 West Virginia Income Maintenance Manual (WVIMM) § 1.3
- D-11 Application for Benefits (DFA-2), blank
- D-12 Supplemental Nutrition Assistance Program Interim Contact Form, submitted April 30, 2019
- D-13 Case Comments, dated October 23, 2019 through January 23, 2020
- D-14 Rights and Responsibilities, signed October 23, 2019
- D-15 eRAPIDS CAF Print Request
- D-16 SNAP Application signature form, dated October 23, 2019
- D-17 PATH Application Search
- D-18 Benefit Recovery Referral; Investigation Findings; Establish Claim
- D-19 WVIMM §§ 1.5

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant was a recipient of WV WORKS benefits for a three-person Assistance Group (AG) from February 1 through October 31, 2019 (Exhibits D-3 through D-5).
- 2) On July 27, 2021, the Respondent completed an investigation and determined that the Appellant received WV WORKS benefits she was ineligible for from February 1 through October 31, 2019 due to an agency error. On July 28, 2021, the Respondent issued a notice advising that a repayment claim was being established against the Appellant (Exhibit D-18).
- 3) On January 30, 2019, the Appellant submitted a signed Request for WV WORKS Cash Assistance (DFA-RFA-1) (Exhibit D-6).
- 4) The Appellant completed a Personal Responsibility Contract (PRC), a Self-Sufficiency Plan (SSP), WV WORKS Orientation, and a mandatory drug screening and questionnaire (Exhibits D-5 and D-8).
- 5) The Appellant completed a WV WORKS eligibility interview (Exhibit D-5).
- 6) The Respondent determined the AG was eligible for WV WORKS beginning February 2019 without the Appellant submitting a signed DFA-2 or DFA-5 form (Exhibits D-5, D-

15, and D-17).

- 7) On February 6 and October 23, 2019, the Appellant signed that she understood she may be required to repay any benefits for which the AG was ineligible due to unintentional errors made by the Respondent (Exhibits D-7 and D-14).

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) §§ 1.5.2, 1.5.3, and 1.5.9 provide in part:

By the 10th working day following the date of the initial contact when a client expresses an interest in applying for WV WORKS, the Worker must have completed a receipt of the DFA-2 or DFA-RFA-1.

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.

The Worker must approve, deny, or withdraw the application within 30 days of the date of application. The date of application is the date that the DFA-2 — which contains, at a minimum, the applicant's name and address — is signed. When the applicant has completed the interactive interview, and there is a technical failure that prevents the printing of 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.

WVIMM §§ 1.5.10, 11.3 and 11.3.2 provide in part:

If an application has not been acted on within the required time limit due to agency error, corrective action must be taken immediately. Repayment is pursued for cash assistance overpayments made under WV WORKS. 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.

In establishing a claim against the AG, the IFM Worker classifies the claim as agency or client error. For agency errors, the first month of overpayment is the month the change would have been effective had the agency acted properly.

DISCUSSION

The Respondent implemented a repayment claim against the Appellant for WV WORKS benefits received from February 1 through October 31, 2019. The Appellant did not contest the amount of the WV WORKS repayment claim. The Appellant only contested the establishment of a repayment claim and argued that an agency oversight resulting in her receipt of WV WORKS was the fault of the agency, not the Appellant. The Respondent contended that because the Respondent's worker failed to have the Appellant complete a signed DFA-2, the Appellant was ineligible to receive WV WORKS benefits.

Pursuant to the policy, when an agency error occurs which results in an AG receiving more cash assistance than entitled to receive, corrective action is taken by establishing a claim for the overpayment. The Respondent had to prove by a preponderance of the evidence that the Appellant was ineligible to receive WV WORKS benefits because of an agency error. To establish that an agency error occurred, the Respondent had to verify that the Respondent's worker did not complete a signed DFA-2 or DFA-5 with the Appellant as required by policy.

The evidence verified that the Appellant requested WV WORKS assistance by completing a DFA-RFA-1. The policy specifies that a full application must be completed subsequent to each DFA-RFA-1. The policy stipulates that an application is complete when the client signs a DFA-2 or DFA-5 — which contains her name and address. Pursuant to the policy, if the DFA-2 is not signed by the applicant, the application is considered incomplete and the Respondent worker must deny the Appellant WV WORKS eligibility.

While the evidence verified that the Appellant completed all other WV WORKS eligibility requirements, no evidence was entered to establish that the Respondent worker had ever required the Appellant to complete a DFA-2 or DFA-5 as required by policy. The evidence verified that the Appellant was ineligible to receive WV WORKS benefits because a signed DFA-2 had not been completed as required by policy. The evidence verified that an agency error resulted in the Appellant being issued WV WORKS benefits she was ineligible to receive. Because an agency error caused the Appellant to receive WV WORKS benefits she was ineligible to receive, the policy requires that Respondent implement a repayment claim.

CONCLUSIONS OF LAW

- 1) A repayment claim must be established when an AG received more cash assistance than it was entitled to receive due to an agency error.
- 2) To be eligible to receive WV WORKS benefits, the Appellant must sign a DFA-2 or DFA-5.
- 3) The preponderance of evidence verified that the Appellant did not sign a DFA-2 or DFA-5.
- 4) The Respondent's worker committed an agency error when the Appellant was approved for WV WORKS benefits without having signed a DFA-2 or DFA-5.

- 5) The Respondent correctly initiated a repayment claim against the Appellant for WV WORKS benefits she received from February 1 through October 31, 2019.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to implement a WV WORKS repayment claim against the Appellant.

ENTERED this 19th day of November 2021.

Tara B. Thompson, MLS
State Hearing Officer