



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
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Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Inspector General

June 16, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1659

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 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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: Sandra Brown, BCF, [REDACTED] DHHR

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

██████████,

Appellant,

v.

ACTION NO.: 22-BOR-1659

**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 June 15, 2022, on an appeal filed May 17, 2022.

The matter before the Hearing Officer arises from the Respondent's May 18, 2022 decision to deny WV WORKS application for benefits.

At the hearing, the Respondent appeared by Sandra Brown, Family Support Supervisor. The Appellant appeared *pro se*. The witnesses were placed under oath and the following documents were admitted into evidence:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Notice of Decision, dated May 18, 2022
- D-3 West Virginia Income Maintenance Manual, Chapter 5, §5.4
- D-4 ██████████ April 2022 bank statement
- D-5 West Virginia Income Maintenance Manual, Chapter 4, §4.3.1, Chart 1
- D-6 West Virginia Income Maintenance Manual, Chapter 5, §5.3.2
- D-7 Document for Protection of Application Date, dated May 16, 2022

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 benefits on May 16, 2022. (Exhibit D-7)
- 2) As part of the application process, the Appellant provided a copy of her April 2022 bank statement from [REDACTED] (hereinafter referred to as “bank statement”). (Exhibit D-4)
- 3) The Appellant’s bank statement showed a balance of \$5,433.64 as of April 30, 2022. (Exhibit D-4)
- 4) On May 18, 2022, the Respondent sent a Notice of Denial of the Appellant’s application stating that the amount of assets was more than allowed for the benefit. (Exhibit D-2)
- 5) The Respondent’s representative conceded that although the May 18, 2022 Notice of Denial did note excessive assets as the basis for the denial, it also incorrectly stated the Reason/Policy was due to a failure by the Appellant to comply with drug testing requirements. (Exhibit D-2)
- 6) The \$5,433.64 bank statement balance reflected the Appellant’s income tax refund.
- 7) No evidence of the date of the income tax refund was determined.
- 8) The inclusion of any Earned Income Tax Credit (EITC) or Coronavirus Aid Relief and Economic Security (CARES) Act payment in the Appellant’s income tax refund was not determined.
- 9) The Appellant did not contest the amount in her bank account as of April 30, 2022.

APPLICABLE POLICY

To be eligible for the WV Works program, the total amount of countable assets cannot exceed \$2,000 regardless of the number in the assistance group. (West Virginia Income Maintenance Manual, Chapter 5, §5.4)

Income tax refunds and rebates are counted as assets for the WV Works program. However, the Coronavirus Aid Relief and Economic Security (CARES) Act one-time \$1,200 per individual, \$2,400 per couple and \$500 per dependent child federal stimulus payment are classified as a tax rebate but will not be counted as an asset for a full 12 months from the date of receipt. (West Virginia Income Maintenance Manual, Chapter 5, §5.5.22)

For WV Works, Earned Income Tax Credit (EITC) payments are excluded in the month of receipt and the following month only. This applies when received as part of the person's pay or as one payment at end of the year. (West Virginia Income Maintenance Manual, Chapter 5, §5.5.14)

DISCUSSION

The Appellant applied for WV Works benefits on May 16, 2022. As part of the eligibility determination, the Appellant provided a copy of her bank statement for April 2022. The balance of the provided bank statement showed a total of \$5,433.64 as of April 30, 2022. Policy sets the asset limit for WV Works program eligibility as \$2,000. The Respondent determined that the Appellant was over the asset limit and issued a Notice of denial on May 18, 2022.

It is uncontested that the amount reflected in the Appellant's bank statement was due to her income tax refund. Policy specifically states that income tax refunds and rebates are counted as assets in considering eligibility for the WV Works program. However, if the Appellant's tax refund included an EITC or CARES payment, then policy excludes them as being counted as assets for certain specified times. EITC payments are not counted as an asset in the month of receipt and the following month only. CARES payments are excluded as an asset for twelve months after receipt. Because both EITC and CARES payments may be included in an individual's federal income tax refund, more information is needed to determine whether the Respondent correctly considered the Appellant's income tax refund amount reflected in her bank statement. Additionally, a determination of when the Appellant received her income tax refund is necessary for a proper evaluation of her assets. There was no evidence presented to show that the Respondent did consider these possible exclusions.

As there was not enough evidence presented to show that the Respondent correctly followed policy in considering possible exclusions to the Appellant's included assets, the Respondent's decision to deny the Appellant's WV Works application cannot be affirmed.

CONCLUSIONS OF LAW

- 1) WV Works policy requires that income tax refunds and rebates be counted as assets in considering eligibility.
- 2) Earned Income Tax Credit (EITC) payments are excluded in the month of receipt and the following month only.
- 3) Policy excludes CARES payments for twelve months after receipt.
- 4) There was no evidence presented to show that the Respondent properly evaluated these possible exclusions to the asset policy.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant's WV Works application. The case is **REMANDED** to determine whether the Appellant's income tax refund included excludable EITC and/or CARES payments.

ENTERED this 16th day of June 2022

Lori Woodward, Certified State Hearing Officer