



**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) 350-0805 Fax: (304) 558-1992**

**Jolynn Marra
Inspector General**

October 5, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-2111

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Elvie Funk, WVDHHR

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

██████████,

Appellant,

v.

Action No.: 22-BOR-2111

**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 September 28, 2022, on an appeal filed September 8, 2022.

The matter before the Hearing Officer arises from the September 2, 2022, decision by the Respondent to terminate WV WORKS benefits.

At the hearing, the Respondent appeared by Tina Elza, Family Support Specialist, WVDHHR. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 Notice of Decision dated September 2, 2022
- D-2 West Virginia Income Maintenance Manual Chapter 3.3.2
- D-3 West Virginia Income Maintenance Manual Chapter 7.3.65
- D-4 Notarized statement of ██████████ dated April 10, 2017

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 was receiving WV WORKS benefits for a minor child, [REDACTED], as a specified relative.
- 2) The Appellant provided a notarized statement from her mother, [REDACTED], to the Respondent on April 10, 2017, stating that [REDACTED] is the Appellant's niece (Exhibit D-4).
- 3) The Appellant has guardianship of [REDACTED] and has been the caretaker of [REDACTED] since the child was five days old (Exhibit D-4).
- 4) [REDACTED] is reportedly the child of the Appellant's brother, [REDACTED], who is currently incarcerated.
- 5) Paternity has never been established for [REDACTED]
- 6) The Respondent's Bureau for Child Support Enforcement lists the father of [REDACTED] as "unknown."
- 7) The Respondent terminated the Appellant's WV WORKS benefits after federal audit preparation revealed that a blood relationship between the Appellant and [REDACTED] had never been established. As a result, the Respondent alleged that the Appellant did not meet the specified relative requirement.
- 8) The Respondent sent the Appellant a Notice of Decision on September 2, 2022, indicating that the WV WORKS benefits would stop as the household's living situation prevented eligibility (Exhibit D-1).

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 3.3.2 (Exhibit D-2) states that to receive WV WORKS benefits:

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 qualify a person as a specified relative. A specified relative is any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child. Policy specifies that an aunt/niece relationship is considered a third-degree kinship relationship.

Under certain circumstances, eligibility continues during periods of separation of the child and the specified relative. A specified relative is defined as follows:

- Natural or adoptive parents.

If the child is living with his natural father and paternity has been legally established, the father is considered a specified relative; a relative of the father of a child born out of wedlock can qualify as a specified relative only if the child's paternity has been established.

West Virginia Income Maintenance Manual Chapter 7.3.65 (Exhibit D-3) states that a specified relationship must be established prior to initial approval for WV WORKS benefits. In the absence of any documentary proof of the specified relative relationship, the relative's statement about the reason there is no proof, and at least one notarized statement from a person knowledgeable about the situation, is acceptable. The notarized statement must describe the relationship and explain how the individual knows it to be true.

West Virginia Income Maintenance Manual Chapter 4.2.G.5 (in effect in 2017) states the following regarding when to verify the specified relative relationship: The specified relative relationship must be verified prior to WV WORKS approval when paternity has not been established and a relative of the child's putative father applies as a specified relative. In the absence of any documentary proof of the specified relative relationship, the relative's statement about the reason there is no proof, and at least one notarized statement from a person knowledgeable about the situation, is acceptable. The notarized statement must describe the relationship and explain how the individual knows it to be true.

DISCUSSION

Policy states that a specified relationship must be established prior to initial approval for WV WORKS benefits. In order for an individual to be considered a caretaker relative, he must be a specified relative. A specified relative is any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child. An aunt/niece relationship is considered a third-degree kinship relationship. In the absence of any documentary proof of the specified relative relationship, the relative's statement about the reason there is no proof, and at least one notarized statement from a person knowledgeable about the situation is acceptable. The notarized statement must describe the relationship and explain how the individual knows it to be true.

The Appellant testified that she has cared for [REDACTED] since the child was an infant and she has guardianship of the child. She stated that [REDACTED] is the biological child of her brother, [REDACTED]. The Appellant contended that [REDACTED] is not listed on the child's birth certificate and paternity has never been established due to [REDACTED] threats of violence. [REDACTED] is currently incarcerated and has never been involved with [REDACTED].

The Appellant had provided a notarized statement from her mother, [REDACTED], who is also the mother of [REDACTED], in April 2017. In the statement, [REDACTED] attested that [REDACTED] is the Appellant's niece, and the Appellant has been the child's guardian/caretaker since the child was five days old.

Policy in effect in 2017 specifically states that when a relative of a child's putative father applies for WV WORKS benefits **when paternity has not been established**, the relative's statement

about the reason there is no proof, and at least one notarized statement from a person knowledgeable about the situation, is acceptable. The verification policy, as written in 2017, was clearly intended to cover specified relative verification for situations in which paternity had not been established.

The Appellant provided credible testimony about why paternity has not been established for [REDACTED]. The notarized statement completed by [REDACTED] which was accepted by the Respondent as verification in 2017, describes the familial relationship between the Appellant and [REDACTED], although it does not provide an in-depth explanation of how [REDACTED] is aware that [REDACTED] is her son's biological child.

The Appellant contended that she should have been informed if additional information was needed when she applied for benefits.

The Respondent's decision to terminate WV WORKS benefits cannot be affirmed. Upon case review, the Respondent determined that a 2017 notarized statement was insufficient to establish a specified relative relationship between the Appellant and [REDACTED]. However, the statement was accepted as verification in 2017 in accordance with policy that clearly detailed the notarized statement process when **paternity has not been established**. There is no evidence to demonstrate that the Appellant was afforded an opportunity to provide a more detailed notarized statement to establish the specified relative relationship if additional information was required.

CONCLUSIONS OF LAW

- 1) Policy states that a child must reside with a specified relative to be eligible for WV WORKS benefits.
- 2) The Appellant is the aunt of [REDACTED] for whom she is receiving WV WORKS benefits.
- 3) The niece/aunt relationship qualifies as an acceptable specified relative relationship.
- 4) In the absence of documentary proof of a specified relative relationship, the Appellant's statement about the reason there is no proof, and at least one notarized statement from a person knowledgeable about the situation is considered acceptable verification.
- 5) The Appellant provided credible testimony as to why no documentary proof of paternity exists for [REDACTED].
- 6) The Appellant provided a notarized statement from her mother in 2017 concerning her mother's knowledge of the specified relative relationship.
- 7) Policy in 2017 stipulated that a notarized statement could be utilized to establish a specified relative relationship in cases in which paternity had not been established.

- 8) The notarized statement provided by the Appellant was accepted at the time of application.
- 9) There is no evidence that the Appellant has been given an opportunity to provide additional notarized statements from individuals who may have knowledge of the specified relative relationship if additional information is required.
- 10) The Respondent's decision to terminate the Appellant's WV WORKS benefits cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's action to terminate the Appellant's WV WORKS benefits.

ENTERED this ____ Day of October 2022.

**Pamela L. Hinzman
State Hearing Officer**