



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

**Bill J. Crouch  
Cabinet Secretary**

**BOARD OF REVIEW  
Raleigh County DHHR  
407 Neville Street  
Beckley, WV 25801**

**Sheila Lee  
Interim Inspector General**

November 29, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 22-BOR-2354

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,

Kristi Logan  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Etta Thornburgh, [REDACTED] y DHHR

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

██████████,

**Appellant,**

**v.**

**Action Number: 22-BOR-2354**

**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 November 16, 2022, on an appeal filed October 25, 2022.

The matter before the Hearing Officer arises from the September 27, 2022, decision by the Respondent to deny the Appellant's application for caretaker relative cash assistance benefits.

At the hearing, the Respondent appeared by Etta Thornburgh, Family Support Specialist Supervisor. The Appellant was self-represented. The witnesses were sworn in, and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Hearing Request Notification Form
- D-2 Case Comments for August and September 2022
- D-3 Report of Guardian Ad Litem from the ██████████ Family Court dated August 16, 2022
- D-4 West Virginia Income Maintenance Manual §3.3.2
- D-5 West Virginia Income Maintenance Manual §7.3.65
- D-6 Final Order on Petition for Legal Guardianship from the ██████████ Family Court dated August 17, 2022
- D-7 Case Comments for August and September 2022
- D-8 Notice of Denial dated September 27, 2022
- D-9 Hearing Summary

### **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 caretaker relative cash assistance for [REDACTED] on August 16, 2022.
- 2) The Appellant was granted legal guardianship of [REDACTED] on August 17, 2022 (Exhibit D-6).
- 3) The Appellant reported to the Respondent that [REDACTED] grandmother was her first cousin (Exhibit D-7).
- 4) The Respondent issued a Notice of Denial to the Appellant on September 27, 2022, advising that the Appellant did not have a qualifying relationship to [REDACTED] to receive benefits (Exhibit D-8).

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual §3.3 provides information about WV WORKS eligibility:

#### **3.3.2 Living with a Specified Relative (WV WORKS)**

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. A specified relative is any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child, as shown in the table below.

<b>Degree of Relationship</b>	<b>Natural or Adoptive Parents</b>	<b>Blood Relative</b>	<b>Step Relative</b>
First Degree	Mother, father		Stepfather, stepmother
Second Degree		Brother, sister, grandparent, half-brother, half-sister	Stepbrother, stepsister, step-grandparent

Third Degree		Great-grandparent, aunt, uncle, niece, nephew	Step-great-grandparent, step-aunt, step-uncle, step-niece, step-nephew
Fourth Degree		Great-great-grandparent, great-aunt, great-uncle, first cousin	Step-great-great-grandparent, step-great-aunt, step-great-uncle, step-first cousin
Fifth Degree		Great-great-great-grandparent, great-great-aunt, great-great-uncle, first cousin once removed (child of first cousin)	Step-great-great-great-grandparent, step-great-great-aunt, step-great-great-uncle, step-first cousin once removed

A specified relative is defined as follows:

- Natural or adoptive parents.
  - If a 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.
  - Adoption procedures must be finalized in order for an adoptive parent to qualify as a specified relative
- Blood relative: Those of half-blood, brothers or sisters, grandparents, great-grandparents, great-great grandparents, great-great-great grandparents, uncles or aunts, great-uncles or aunts, great-great uncles or aunts, nephews or nieces, first cousins, first cousins once removed.
- Legal stepparent, stepbrother or stepsister, step-grandparents, step-great-grandparents, step-great-great grandparents, step-great-great-great grandparents, step-uncles or aunts, step-great-uncles or aunts, step-great-great uncles or aunts, step-nephews or nieces, step-first cousins, step-first cousins once removed;
- The specified relationship exists even when a marriage terminates in death or divorce. Spouses of stepparents are not specified relatives.

## **DISCUSSION**

Policy stipulates that to qualify for WV WORKS cash assistance, the child must reside with a specified relative. Policy defines a specified relative as any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child. Legal custody or guardianship of a child does not, in of itself, qualify a person as a specified relative.

The Respondent denied the Appellant's application for caretaker relative cash assistance as it determined that the Appellant was outside the fifth degree of relationship to [REDACTED]. The Appellant testified that her grandfather and [REDACTED] grandfather are brothers. The Appellant did not dispute that she was not within the fifth degree of relationship to [REDACTED] but contended that she rescued [REDACTED] from an abusive home and asked that a waiver to policy be granted to provide her assistance with his care.

Pursuant to policy, the Appellant must be within the fifth degree on kinship to [REDACTED] to receive caretaker relative cash assistance benefits on his behalf. Based upon the testimony provided by the Appellant regarding her relationship to [REDACTED], she is within the sixth degree of kinship and therefore ineligible to receive benefits. Although the Appellant has legal custody of [REDACTED], a qualifying relationship must be established to be eligible for WV WORKS benefits.

Whereas the Appellant does not have a qualifying relationship to [REDACTED] in accordance with policy, and the Board of Review lacks the authority grant waivers or change policy, the Respondent's decision to deny the Appellant's application for WV WORKS caretaker relative cash assistance is affirmed.

### **CONCLUSIONS OF LAW**

- 1) Policy stipulates that to qualify for WV WORKS cash assistance, the child must reside with a specified relative.
- 2) A specified relative is defined as any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child.
- 3) The Appellant is not within a fifth degree of kinship to [REDACTED]
- 4) The Respondent correctly denied the Appellant's application for WV WORKS caretaker relative benefits.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny the Appellant's application for WV WORKS caretaker relative cash assistance benefits.

**ENTERED this 29<sup>th</sup> day of November 2022.**

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**Kristi Logan**  
**Certified State Hearing Officer**