



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Jeffrey H. Coben, M.D.
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

April 21, 2023

[REDACTED]

Re: [REDACTED] v WV DHHR
ACTION NO.: 23-BOR-1301

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,

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

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Tanya Tyler, WV DHHR, [REDACTED]

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

IN THE MATTER OF:

ACTION NO.: 23-BOR-1301

██████████,

Appellant,

v.

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on April 19, 2023, on an appeal filed March 01, 2023.

The matter before the Hearing Officer arises from the February 15, 2023 determination by the Respondent to terminate the Appellant's West Virginia WORKS (WV WORKS) cash benefits.

At the hearing, the Respondent appeared by Tanya Tylers, Family Support Supervisor, DHHR. Appearing as a witness for the Department was Linda Stover, Repayment Investigator, WV DHHR. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████ and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV DHHR Notice of Decision, dated February 15, 2023
- D-2 West Virginia Income Maintenance Manual (WVIMM) §§ 3.4.1.A and 18.1.1
- D-3 WV DHHR WVW Self Sufficiency Plan, signed September 21, 2022
- D-4 Letter from ██████████ Schools to ██████████ regarding homeschool enrollment for ██████████, dated August 18, 2020; WV PATH eligibility system printout of Case Comments, dated June 14, 2022 through June 28, 2022; ██████████ Online Student Report for ██████████, dated February 2022; ██████████ Report Card for ██████████, dated June 24, 2021; WV PATH eligibility system printout of Case Comments, dated July 01, 2022 through July 08, 2022; and ██████████ Report Card for ██████████, dated June 24, 2021
- D-5 WV PATH eligibility system printout of Case Comments, dated December 28, 2021 through January 12, 2022; WV DHHR Case Staffing Report, signed January 03, 2022; and

Appellant's Exhibits:

- A-1 [REDACTED] Report Card for [REDACTED], dated February 23, 2023; [REDACTED] Progress Report Card for [REDACTED], dated October 04, 2021; [REDACTED] Progress Report Card for [REDACTED], dated July 09, 2021; [REDACTED] Progress Report Card for [REDACTED], unknown date; [REDACTED] Progress Report Card for [REDACTED], dated March 13, 2021; [REDACTED] Progress Report Card, dated January 27, 2021; and Illegible [REDACTED] Progress Report Card, unknown date
- A-2 Letter of Intent to Homeschool signed by [REDACTED] and [REDACTED], date unknown; and Letter from [REDACTED] Schools to [REDACTED] regarding homeschool enrollment for [REDACTED], dated August 18, 2020
- A-3 [REDACTED] Report Card for [REDACTED], dated June 24, 2021; [REDACTED] Report Card for [REDACTED], dated May 07, 2021; [REDACTED] Report Card for [REDACTED], dated March 26, 2021; [REDACTED] Report Card for [REDACTED], dated February 08, 2021; [REDACTED] Report Card for [REDACTED], dated December 11, 2020; [REDACTED] Report Card for [REDACTED], dated December 03, 2020; and [REDACTED] Notifications Sheets
- A-4 Handwritten Homeschool Subject Schedule Sheets
- A-5 Illegible [REDACTED] Report Card, date unknown

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 a recipient of WV WORKS benefits for a two (2) person Assistance Group (AG). (Exhibit D-4)
- 2) On an unknown date, it was reported to the Department's Front-End Fraud Unit (FEFU) that the Appellant's child, [REDACTED], was not residing in the Appellant's home a majority of the time.
- 3) On an unknown date(s), the Respondent requested proof of residency/verification that [REDACTED] is residing in the Appellant's home 50% or more of the time.
- 4) On February 15, 2023, the Respondent issued a notice advising the Appellant that her WV WORKS benefits would be terminated, effective March 1, 2023, due to child [REDACTED] not residing in the Appellant's home a majority of the time. (Exhibit D-1)
- 5) On March 01, 2023, the Appellant requested a Fair Hearing based on the February 15, 2023 Notice of Termination. (Exhibit D-1)
- 6) The Respondent failed to notify the client in writing of the needed information and the date by which the information must be received.
- 7) [REDACTED] paternal grandmother, [REDACTED] provides homeschool educational costs and curriculum for [REDACTED], and is the primary source of all educational correspondence.

- 8) On April 19, 2023, at the time of the hearing, the Appellant and both witnesses, [REDACTED] provided collateral statements that the Appellant is the custodial parent of child [REDACTED], with whom she lives with exactly 50% of the time.

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.

WVIMM § 3.4.1.A Who Must Be Included provides, 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.

WVIMM § 7.2.1 When Verification is Required provides, in part:

Verification of a client's statement is required when:

- Policy requires routine verification of specific information.
- The information provided is questionable. To be questionable, it must be:
 - Inconsistent with other information provided; or
 - Inconsistent with the information in the case file; or
 - Inconsistent with information received by the Department of Health and Human Resources (DHHR) from other sources; or
 - Incomplete; or
 - Obviously inaccurate; or
 - Outdated.
- Past experience with the client reveals a pattern of providing incorrect information or withholding information. A case recording must substantiate the reason the Worker questions the client's statement.
- The client does not know the required information.

WVIMM § 7.2.3 Client Responsibilities provides, in part:

The primary responsibility for providing verification rests with the client. It is an eligibility requirement that the client cooperate in obtaining necessary verifications, with an exception being that a client must never be asked to provide verification that

he is or is not either a fleeing felon or a probation/parole violator. The client is expected to provide information to which he has access and to sign authorizations needed to obtain other information. Failure of the client to provide necessary information or to sign authorizations for release of information results in denial of the application or closure of the active case, provided the client has access to such information and is physically and mentally able to provide it.

Refusal to cooperate, failure to provide necessary information, or failure to sign authorizations for release of information, provided the client has access to such information and is physically and mentally able to provide it, may result in one of the following:

- Denial of the application
- Closure of the assistance group (AG)
- Determination of ineligibility
- Disallowance of an income deduction or an incentive payment

WVIMM § 7.2.4 Worker Responsibilities provides, in part:

The Worker has the following responsibilities in the verification process:

- At application, redetermination, and anytime a DFA-6 is used, the Worker must list all required verification known at the time. The Worker should only request additional verification if information provided is incomplete or additional information is necessary to determine eligibility.
- If the client is unsuccessful in obtaining information, or if physical or mental limitations prevent his compliance, and there is no one to assist him, the Worker must document attempts to obtain the verification.
- The Worker must accept any reasonable documentary evidence as verification and must not require a specific kind or source of verification. Verification may be submitted in person, by mail, by fax, or electronically.
- The Worker must not request verification if the case record or other documentation shows that verification has previously been supplied. It may, however, be requested if the verification provided or shown in the Department's records is incomplete, inaccurate, outdated, or inconsistent with recently reported information.
- If the client requests a receipt for verification, one must be provided.
- When the client alleges sexual harassment and domestic violence, sexual assault, and stalking, the Worker, in order to ensure the safety of the individual, must never contact the abuser, his relatives, or friends.
- When the Worker must make collateral contact, such as but not limited to, a client's employer, the Worker must not disclose the client's status as an applicant/client of a DHHR program.

- When the Worker receives information about the SNAP AG during the certification period that requires additional clarification or verification, the Worker may send a DFA-6 or may request, but not require, the client report to the office for an interview.

WVIMM § 7.3 Verification Requirements provides, in part:

The table below identifies items to be verified, which programs require verification, when information must be verified, and possible sources of verification.

46. WV WORKS Joint Custody, Which Parent Will Receive Benefits for Child

Joint Custody Possible Sources of Information include: Statements from parents; collateral statements from friends, neighbors, family; court order

WVIMM § 9.2.1 DFA-6, Notice of Information Needed provides, in part:

The DFA-6 may be used during any phase of the eligibility determination process. At the time of application, it is given or mailed to the applicant to notify him of information or verification he must supply to establish eligibility. When the DFA-6 is mailed at the time of application, the client must receive the DFA-6 within five working days of the date of application.

If the client fails to adhere to the requirements detailed on the DFA-6, the application is denied or the deduction disallowed, as appropriate. The client must be notified of the subsequent denial by form DFA-NL-A.

This form also notifies the client that his application will be denied, or a deduction disallowed, if he fails to provide the requested information by the date specified on the form. The Worker determines the date to enter to complete the sentence, "If this information is not made available to this office by ..." as follows.

WVIMM § 9.3.5 DFA-6, Notice of Information Needed provides, in part:

If, at redetermination, or the time of any other change in client circumstances, it becomes clear that additional information or verification is needed, the DFA-6 is used to notify the client in writing of the needed information and the date by which the information must be received.

DISCUSSION

West Virginia's implementation of Temporary Assistance for Needy Families (TANF), provides monthly cash assistance along with a variety of employment and education related services to low income families with dependent children with the goals of assisting economically dependent and at-risk families to become self-supporting, enhancing the well-being of children, and assisting families near the poverty level to remain self-sufficient. The Respondent bears the burden of proof to establish that action taken against the Appellant was in accordance with policy. The Respondent had to prove by a preponderance of evidence that the Appellant's WV WORKS benefits were correctly terminated based on the Appellant's child not residing in the Appellant's home 50% or

more of the time.

On February 15, 2023, the Respondent issued a notice advising the Appellant that her WV WORKS benefits would be terminated, effective March 1, 2023, due to the Appellant's child, [REDACTED], not residing in the Appellant's home 50% or more of the time. The Respondent testified that it was reported to the Department's Front-End Fraud Unit (FEFU) that [REDACTED] only resided in the Appellant's home on the weekends. The Respondent argued that she made multiple requests for proof of [REDACTED] residency, but the Appellant failed to provide it. The Respondent further testified that because all educational correspondence provided to the Department lists [REDACTED] home address as that of [REDACTED] paternal grandmother, it was reasonable to believe that [REDACTED] was not residing in the Appellant's home a majority of the time. The Respondent further testified that because the Appellant failed to provide the Department with the requested proof of residency/verification of [REDACTED] time spent in each household, the Appellant's WV WORKS benefits were terminated, effective March 1, 2023.

The Appellant testified that because she is currently residing with her mother, and because [REDACTED] father is currently residing with [REDACTED], [REDACTED] time is split evenly between the two households. The Appellant argued that because [REDACTED] has more experience by having previously homeschooled [REDACTED] father, and because [REDACTED] and [REDACTED] father provide all of the educational costs and curriculum, [REDACTED] is better suited to be the primary source of all [REDACTED] educational correspondence, thus being the reason her address is listed on all the education documentation submitted to the Department. During the hearing, [REDACTED] and [REDACTED] corroborated the Appellant's testimony and provided sworn statements that, while the exact days [REDACTED] spends at each residence is not written on paper, the Appellant's child is residing in the Appellant's home 50% or more of the time.

There were no case comments or documentation provided to indicate that a DFA-6 was ever issued by the Respondent to notify the Appellant of the need to verify [REDACTED] residency to establish continued eligibility. While the Appellant admittedly acknowledged failing to provide the Department with additional documentation of [REDACTED] residing in the Appellant's home 50% or more of the time, policy is clear in that if, at redetermination, or the time of any other change in client circumstances, it becomes clear that additional information or verification is needed, a DFA-6 must be used to notify the client in writing [emphasis added] of the needed information and the date by which the information must be received.

Further, WVIMM § 7.3 Verification Requirements stipulates that in joint custody situations, in order to determine which parent will receive benefits for a child, possible sources of verification include that of collateral statements from parents and/or family. Because, at the time of the hearing, the Appellant and both witnesses provided collateral statements that the Appellant is the custodial parent of child [REDACTED] with whom she lives with exactly 50% of the time; it is the finding of this Hearing Officer that the Respondent's decision to terminate WV WORKS benefits cannot be affirmed.

CONCLUSIONS OF LAW

- 1) The Respondent may deny or terminate an AG's WV WORKS eligibility if the child does not reside with the AG parent exactly 50%, or more, of the time.

- 2) When reported information results in a possible change in benefits and additional or clarifying information is needed, the Respondent is required to first request the information by using the DFA-6 or Notice of Information Needed. The due date for verification information requested must be 10 days from the date of issuance.
- 3) The preponderance of evidence failed to prove that the Respondent issued a Notice of Information Needed to verify the residency of [REDACTED]
- 4) Verification Requirements stipulate that in joint custody situations, possible sources of verification include that of collateral statements from parents and/or family.
- 5) The Appellant and both witnesses provided collateral statements that the Appellant is the custodial parent of child [REDACTED], with whom she lives with exactly 50% of the time.
- 6) The preponderance of evidence showed that [REDACTED] lives with the Appellant 50% of the time.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to terminate the Appellant's WV WORKS benefits effective March 1, 2023.

ENTERED this _____ day of April 2023.

Angela D. Signore
State Hearing Officer