



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

**Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary**

**Christopher G. Nelson
Interim Inspector General**

September 26, 2023

[REDACTED]

Re: [REDACTED] v WV DHHR
ACTION NO.: 23-BOR-2377

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: Birden Porter, Repayment Investigator, Investigations and Fraud Management

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

IN THE MATTER OF:

ACTION NO.: 23-BOR-2377

██████████,

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 (WV) Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on August 22, 2023, on an appeal filed July 31, 2023.

The matter before the Hearing Officer arises from the July 03, 2023 determination by the Respondent to seek repayment of the Appellant's West Virginia WORKS (WV WORKS) cash benefits.

At the hearing, the Respondent appeared by Birdena Porter, Repayment Investigator, Investigations and Fraud Management. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Case Summary for ██████████
- D-2 WV PATH Temporary Assistance for Needy Families (TANF) application, dated December 06, 2021; and Rights and Responsibilities Form, signed by ██████████, dated December 06, 2021
- D-3 Notice of Decision of prorated payment amount for the month of December 2021, dated December 13, 2021; and Notice of Decision of payment amount for the month of January 2022, dated December 13, 2021
- D-4 WV PATH Case Benefit Summary Screen Print
- D-5 Family Court of ██████████ West Virginia Modification Dismissal Order, signed by ██████████, dated March 22, 2022
- D-6 Cash Assistance Claim Determination
- D-7 West Virginia Income Maintenance Manual (WV IMM) § 3.3.2

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) On December 06, 2021, the Appellant applied for WV WORKS Cash Assistance Benefits (WV WORKS) for a three (3) person Assistance Group (AG) (herself, child [REDACTED] and child [REDACTED]). (Exhibit D-2)
- 2) The Appellant listed child [REDACTED] as her brother-in-law on the December 06, 2021 application. (Exhibit D-2)
- 3) At the time of application, the Appellant signed acknowledgement that she understood she may be required to repay any benefits for which the AG was not eligible because of errors made by either the Appellant or the Respondent. (Exhibit D-2)
- 4) On December 13, 2021, the Appellant received notice that she was approved for WV WORKS benefits for herself, child [REDACTED] and child [REDACTED] in the amount of \$542 monthly. (Exhibit D-3)
- 5) On December 22, 2021, the Appellant's WV WORKS caseworker contacted the Appellant regarding the Appellant's relation to child [REDACTED]. At that time, it was reported that the child was not related to her. (Exhibit D-5)
- 6) Child [REDACTED], was removed from the Appellant's case on December 22, 2021, due to not meeting the policy definition of a "specified relative." (Exhibits D-5 and D-6)
- 7) As a result of the reported information, a repayment investigation was completed and the Respondent established a "client error" Cash Assistance repayment claim against the Appellant in the amount of \$593 for the time period of December 06, 2021 through January 31, 2022. (Exhibits D-2 through D-6)
- 8) On July 03, 2023, the Respondent issued a Notification of Cash Assistance and/or School Clothing Allowance Overpayment due to a "client error" in the amount of \$593 in order to recoup the over-issuance of WV WORKS benefits.
- 9) The Appellant contested the July 03, 2023 repayment claim, and on July 31, 2023, requested a Fair Hearing.
- 10) The Appellant did not dispute her relationship with child [REDACTED] or the repayment claim amount of \$593.

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.

WV IMM § 3.3.2 provides, in part:

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.

WV IMM § 3.10 provides, in part:

In order to be eligible for WV WORKS, the parent or caretaker relative must be living in the household with a dependent child for whom they assume primary responsibility.

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

WV IMM § 11.2.3.A.2 provides, in part:

When the client fails to provide accurate or complete information, the first month of the overpayment is the month the incorrect, incomplete, or unreported information would have affected the benefit level, considering reporting and noticing requirements.

WV IMM § 11.2.3.A.2 provides, in part:

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false. It is an essential element in a misrepresentation violation that the client knew his statement was false. The misrepresentation must be of an existing fact and cannot be said to be willfully false if it is merely an expression of opinion.

WV IMM § 11.3 provides, in part:

When an AG has received more cash assistance than it was entitled to receive, corrective action is taken by establishing a claim for overpayment. The claim is the difference between the amount of benefits received and the amount of benefit to which the AG was entitled to receive.

DISCUSSION

The Respondent had to prove by a preponderance of evidence that it correctly followed the policy when establishing a “client error” repayment claim against the Appellant’s WV WORKS benefits due to child [REDACTED] not meeting the policy definition of a “specified relative.”

The Respondent testified that on December 10, 2021, the Appellant applied for and completed orientation for WV WORKS benefits for herself, her biological child [REDACTED] and child [REDACTED], who the Appellant reported as her brother-in-law at the time of application. The Appellant was approved for \$542 per month in WV WORKS benefits, to which she received a prorated amount of \$451 for the month of December 2021. The Respondent testified that on December 22, 2021, the Appellant was contacted by her caseworker regarding her WV WORKS benefits. At the time of the December 2021 conversation, the Appellant reported that child [REDACTED] was not related to her but that she had been “taking care of him.” [REDACTED] was removed from the Appellant’s WV WORKS case on December 22, 2021, due to not meeting the policy definition of a “specified relative.”

Because of the reported change in relationship, a repayment investigation was completed, which resulted in the Respondent establishing a WV WORKS/Cash Assistance Claim Determination against the Appellant for the time period of December 06, 2021 through January 31, 2022. On July 03, 2023, the Respondent issued a Notification of Cash Assistance and/or School Clothing Allowance repayment claim in the amount of \$593 to the Appellant in order to recoup the over-issuance of WV WORKS benefits. Because the overpayment of WV WORKS benefits was caused by the Appellant’s failure to provide accurate or complete information regarding her relationship to child [REDACTED] the claim was considered a “client error.” The Respondent testified that at the time of application, the Appellant signed the Rights and Responsibilities form acknowledging that she understood she may be required to repay any benefits for which the AG was not eligible due to errors made by either the Appellant or the Respondent.

The Appellant provided credible testimony that, at the request of child [REDACTED] mother, he began living with the Appellant at the age of seven (7) through “this year,” when [REDACTED] began residing with his brother. The Appellant further testified that, while she did not have formal custody of [REDACTED] she did have guardianship, and offered to provide physical witnesses, submit educational

correspondence issued to her, and supply a copy of her lease agreement as “proof.” The Appellant explained that, while she was not officially married to [REDACTED] brother, she did have a twenty (20) year relationship with him, and further clarified that [REDACTED] is the biological uncle of her children.

However, per policy, a child must be residing with a *specified relative*, who assumes primary responsibility for the child’s care, in a place established as the relative’s home. Legal custody or guardianship of a child does not, in itself, qualify a person as a specified relative. A specified relative is defined by policy as a natural or adoptive parent, blood relative or legal relative within the fifth degree of kinship. Because the Appellant is not legally or blood related to [REDACTED] the policy stipulates that she is not eligible to receive WV WORKS benefits on his behalf. Additionally, the policy further reads that it is the client’s responsibility 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. The Appellant signed acknowledgement that the information provided was true and correct; however, the evidence and testimony established that the Appellant made a false statement regarding her relationship with [REDACTED] for the purpose of receiving WV WORKS benefits.

While child [REDACTED] may have been residing with the Appellant during the time frames she provided in her testimony, physical custody of a child does not supersede the policy’s requirement that a child must be residing with a specified relative to be eligible for WV WORKS benefits. The policy further stipulates that, when an AG has been issued more cash assistance than it was entitled to receive, corrective action must be taken by establishing a repayment claim whether the error was caused by the client or the agency. Because the Respondent established the repayment claim within the applicable timeframes established by policy, and because [REDACTED] does not meet the definition of a “specified relative,” it is the finding of this Hearing Officer that the Appellant received an over-issuance of WV WORKS benefits from December 06, 2021 through January 31, 2022, in the amount of \$593, as the result of a “client error.”

CONCLUSIONS OF LAW

- 1) Policy requires that a child must be residing with a specified relative to be eligible for WV WORKS benefits.
- 2) A specified relative is defined as a natural or adoptive parent, blood relative, or legal relative within the fifth degree of kinship.
- 3) Child [REDACTED] does not meet the policy definition of a specified relative, in order for the Appellant to receive WV WORKS benefits on his behalf.
- 4) The Appellant was required to report accurate information about her household composition so that the Respondent could make an accurate determination regarding her WV WORKS benefit eligibility.
- 5) Pursuant to policy, when an AG receives more WV WORKS benefits than it is entitled to receive, a repayment claim must be established.
- 6) Because the Appellant received \$593 in WV WORKS benefits than she was not entitled to receive from December 06, 2021 through January 31, 2022, corrective action must be taken

by establishing a repayment claim, whether the error was caused by the client or the agency.

- 7) Because the overissuance of WV WORKS benefits was a result of the Appellant's failure to provide accurate or complete information regarding her relationship to child [REDACTED] the claim is considered a "client error."

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to seek repayment of the Appellant's WV WORKS benefits received from December 06, 2021 through January 31, 2022, in the amount of \$593 as a result of a "client error."

ENTERED this _____ day of September 2023.

Angela D. Signore
State Hearing Officer