



May 29, 2024

[REDACTED]

RE: [REDACTED] v. OIG/IFM
ACTION NO.: 24-BOR-1972

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

cc: Birdena Porter, OIG/IFM

**BEFORE THE WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

████████████████████,

Appellant,

v.

Action Number: 24-BOR-1972

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
INVESTIGATIONS AND FRAUD MANAGEMENT**

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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on May 21, 2024.

The matter before the Hearing Officer arises from the March 12, 2024 decision by the Respondent to establish a repayment claim of WVWORKS/WVEAP (cash assistance) benefits.

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

Department's Exhibits:

- D-1 WV Application for WVWORKS/WVEAP dated June 10, 2022
- D-2 WV Combined Application and Review Form for Financial, Medical, and Supplemental Nutrition Assistance Program
- D-3 eRAPIDS screen print Case Benefit Summary from March 1 to December 1, 2023
- D-4 In the Circuit Court of ██████████, West Virginia, July 10, 2023 Final Order Finding Parents Successful and Dismissing Matter
- D-5 Notification of Cash Assistance and/or School Clothing Allowance Overpayments
- D-6 WV Income Maintenance Manual (WV IMM), Chapter 3, §3.4.1.A (excerpt)

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 completed an application for cash assistance benefits as a caretaker relative for her grandchild [REDACTED] on June 10, 2022. (Exhibit D-1)
- 2) On July 25, 2023, the Appellant completed a review for cash assistance benefits indicating that herself, her husband, and child [REDACTED] were the only members in her household. (Exhibit D-2)
- 3) The Appellant listed [REDACTED] parents, [REDACTED] as absent parents on the July 2023 review. (Exhibit D-2)
- 4) The Appellant signed the Rights and Responsibilities section on the June 2022 application and the July 2023 review, acknowledging understanding of the reporting requirements for WV WORKS program and all other programs. (Exhibits D-1 and D-2)
- 5) On July 10, 2023, the Circuit Court of [REDACTED] West Virginia, found that child [REDACTED] parents were residing with the Appellant. (Exhibit D-4)
- 6) On July 10, 2023, the Circuit Court of [REDACTED], West Virginia returned full custody to Child [REDACTED] parents (hereinafter referred to as "Court Order"). (Exhibit D-4)
- 7) Child [REDACTED] mother had been living together with child [REDACTED] at the Appellant's home.
- 8) Child [REDACTED] and her mother both moved out of the Appellant's home in August 2023.
- 9) The Appellant failed to report that child [REDACTED] mother was residing in the Appellant's home.
- 10) The Appellant failed to report that child [REDACTED] had left her home in August 2023.
- 11) The Appellant continued to receive cash assistance benefits for child [REDACTED] through December 2023. (Exhibit D-3)
- 12) On March 12, 2024, the Respondent sent a Notification to the Appellant that a determination had been made that she was overissued cash assistance in the amount of \$1,668 for the period of September to December 2023 due to client error. (Exhibit D-5).

APPLICABLE POLICY

WV IMM, Chapter 10, § 10.5.2.A, 10.5.2.A, What Must Be Reported:

The client must report all changes in income, assets, household composition, and other circumstances. When the client receives his WV WORKS benefit by direct deposit, he must report changes in bank account information to the Auditor's Office. Refer to each program section in this chapter for action needed on reported changes when verification is not received.

WV IMM, Chapter 10, §10.5.2.B, Timely Reporting, in relevant part:

For WV WORKS cases, a client must report all changes in circumstances within 10 days. ... When a dependent child included in a WV WORKS payment will be absent from the home for a period of 30 consecutive calendar days or more, the parent or other caretaker must notify the Department of Human Services (DOHS) by the end of the fifth calendar day after the date it becomes clear to the parent/caretaker that the child will be absent for at least 30 days.

WV IMM, Chapter 10, §10.5.4.D Change in the AG

§10.5.4.D.1, Additions:

Additions to the AG are effective the month the change occurs, provided the individual is otherwise eligible. An individual who is added to an existing AG is treated as an applicant. Benefits for the individual are prorated from the date that all eligibility requirements are met, including completion of the Drug Use Questionnaire, signing the Personal Responsibility Contract (PRC), signing the Self-Sufficiency Plan (SSP), and attending orientation. Eligibility cannot begin earlier than the date the individual entered the home. If a non-recipient work-eligible individual enters the household, he must complete orientation and a PRC/SSP as a condition of eligibility. Although he is not included in the AG, if he fails to cooperate in completing these activities, the AG will be ineligible for WV WORKS.

WV IMM, Chapter 3, §3.3.2, Living with a Specified Relative (WV WORKS), or (Parents/ Caretaker Relatives Medicaid, AFDC-Related Medicaid), in relevant 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. A specified relative is any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child ...

WV IMM, Chapter 3, §3.4 WV WORKS ELIGIBILITY DETERMINATION GROUPS

§3.4.1 THE ASSISTANCE GROUP (AG)

§3.4.1.A Who Must Be Included, in relevant part:

Whether or not an individual has income sufficient to meet his own needs or the needs of his dependents is not relevant when determining if the individual must be included in the AG.

A Supplemental Security Income (SSI) recipient, age 18 or over, cannot be included in the AG. See “Who Cannot Be Included” below.

The following individuals must be included in the AG:

- All minor, dependent, blood-related, and adoptive siblings who live in the same household with a specified relative.
- ...
- The parent(s) of the child(ren) identified in the example above when the parent(s) lives with the child(ren), unless he falls under any of the categories of who must not be included listed below.
- ...

§3.4.1.B Who Must Not Be Included?

Individuals who fit in at least one of the following categories are ineligible. When all members of the AG meet any of the criteria listed below, the entire case is ineligible. In addition, when all otherwise eligible children meet any of the criteria listed below, except receipt of foster care, adoption assistance, or SSI benefits for a dependent child is age 18 or over, the AG is ineligible.

- Individuals who are noncitizens and are ineligible because they have been sponsored by a private or public agency or organization, or because of deeming income from sponsor to noncitizen.
- Individuals who do not meet the citizenship requirements of Chapter 15.
- Individuals, age 18 or over, who are eligible for SSI benefits as determined by the Social Security Administration (SSA).
 - This includes individuals who are approved, but who have not yet received a payment and individuals for whom benefits are temporarily suspended due to overpayment.
- Individuals who are recipients of federal, state, or local foster care maintenance or an adoption assistance payment.
- The child(ren) of a minor parent (mp) when the minor parent (mp) is a recipient of federal foster care payment.
- An unemancipated minor parent (mp).
- ...
- Non-Recipient Work-Eligible Individuals:
 - Non-Recipient Work-Eligible Individuals are parents or stepparents who must sign the application, complete orientation, a Personal Responsibility Contract (PRC)/Self-Sufficiency Plan (SSP) and be participating in a work activity.
 - Neither Non-Recipient Work-Eligible Individuals nor caretaker relatives may be included in the AG if they are:
 - Individuals convicted in federal or state court of having made a fraudulent statement or representation about residence to receive TANF, WV WORKS, Medicaid, SNAP benefits, or SSI. They are ineligible for 10 years from the date of the conviction. The conviction must have occurred after 8/22/96.

- Individuals who are fleeing to avoid prosecution, or custody/confinement after conviction, for a felony or an attempt to commit a felony.
- Individuals convicted of a felony under federal or state law when the offense involves the possession, use, or distribution of a controlled substance, as defined in Section 102(6) of the Controlled Substance Act and when the offense occurred after 8/22/96. This does not include convictions which have been expunged or reduced to a lesser charge.

...

- Individuals who are violating a condition of probation or parole that was imposed under federal or state law.
- Parents or other included caretakers who do not report that a child is, or will be, out of the home for at least 30 consecutive days. The parents or other caretakers must report the absence within five calendar days of the date that it becomes known to the parents or other caretakers that the child will be absent for at least 30 consecutive days. The individuals who fail to report are permanently removed from the WV WORKS benefit and become non-recipient Work-Eligible Individuals.
- Any individual who has a positive drug test and fails to complete or refuses to participate in the substance abuse treatment and counseling program and job skills program as required is ineligible for the WV WORKS benefit. Ineligibility will continue until the time the individual enrolls and is successfully attending a substance abuse treatment and counseling program and job skills program.
- Any individual who tests positive on a second drug test will be ineligible for the WV WORKS benefit for a period of 12 months or until they have completed both a substance abuse treatment and counseling program and job skills program, whichever is shorter.
- Any individual who tests positive for a third drug test is permanently ineligible for WV WORKS. They must choose a protective payee for the WV WORKS payment for the other members of the WV WORKS AG.

WV IMM, Chapter 11, §11.3, Cash Assistance Claims And Repayment Procedures:

Repayment is pursued for cash assistance overpayments made under the former Aid to Families with Dependent Children/Unemployed Parent (AFDC/U) Program, WV WORKS, Child Support Incentive (CSI), Temporary Assistance for Needy Families (TANF) Program, WV WORKS Support Service Payments, WV WORKS School Clothing Allowance, and the West Virginia School Clothing Allowance.

The establishment, notification, and collection of cash assistance claims are the responsibility of the Claims and Collections Unit (CCU) and Investigations and Fraud Management (IFM). When an assistance group (AG) has received more cash assistance than it was entitled to receive, corrective action is taken by establishing a claim for the overpayment. The claim is the difference between the amount of benefits received and the amount of benefits to which the AG was entitled ... Once the claim is established, there are no hardship provisions or exceptions that delay, suspend, or terminate efforts to collect

the claim.

WV IMM, Chapter 11, §11.3.3, Identifying The Month(S) For Which Claims Are Established:

When a client fails to report changes timely according to Section 10.5.2, and the change would have decreased benefits, a claim is established. Failure to Take Prompt Action and Computation Error below are used when the overpayment is not contested in a Fair Hearing. If a Fair Hearing is held, the Hearing Officer's decision is final.

WV IMM, Chapter 11, §11.3.3.B, Client Errors:

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.

DISCUSSION

On June 10, 2022, the Appellant applied for cash assistance benefits as a caretaker relative of child [REDACTED]. As part of the application, the Appellant signed her acknowledgement and understanding of the Rights and Responsibilities for program participation. On July 25, 2023, the Appellant completed a review of the cash assistance benefits, again signing her acknowledgment and understanding of the Rights and Responsibilities for program participation. On the July 2023 review, the Appellant reported that child [REDACTED] parents, [REDACTED] were absent parents and that only herself, her spouse, and child [REDACTED] were in the household. On July 10, 2023, the Circuit Court for [REDACTED], West Virginia, found that child [REDACTED] parents were living with the Appellant, and returned full custody of child [REDACTED] to them.

The Investigations and Fraud Management Unit determined that because the Appellant was required to report that child [REDACTED] mother was in the household and subsequently failed to report that child [REDACTED] had moved out of the Appellant's household, the Appellant was overissued cash assistance benefits. A repayment claim due to client error was established by the Respondent for overpayment of the benefits from the period of September to December 2023 in the amount of \$1,668. The Respondent sent notification to the Appellant on March 12, 2024 about the determination that she was overissued cash assistance benefits. The Appellant appeals the Respondent's determination.

The Appellant contends that she never received a copy of the Court Order returning full custody of child [REDACTED] to her parents. The Appellant testified that she had only heard from child [REDACTED] parents of the restoration of full custody. Nonetheless, the Appellant was required to report when child [REDACTED] left the home – the Appellant failed to do so. Additionally, the Appellant never reported that the child [REDACTED] mother was living in her household, which she was required to do.

The Appellant first testified that she received approval from her worker* that [REDACTED] mother could stay and babysit child [REDACTED] while she was at work during the day. (*It is unclear as to which agency worker the Appellant allegedly received this approval as she was working with Child

Protective Services and Family Support Services – two separate agencies.) However, the Appellant later reluctantly testified that child [REDACTED] mother had been living with her for some time and only moved out in August 2023. The Appellant attempted to have the Hearing Officer draw an inference that because she did report that Child [REDACTED] mother was in her household during the day to babysit, that was the same as reporting that she was living in the household. This inference cannot be made.

Furthermore, the Appellant had an opportunity, at the very least, to report that child [REDACTED] mother was in the household on her July 25, 2023 benefit review – she failed to do so. The Appellant went as far as listing child [REDACTED] mother as an “absent parent” on the July 2023 review. As stated above, the July 10, 2023 Court Order also found that child [REDACTED] mother (and father) were living with the Appellant. The preponderance of evidence showed that the Appellant failed to report the change in her household.

Policy requires that when a client fails to report changes in a timely manner, a repayment claim is established if the change would have decreased benefits. When a 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 after considering the reporting and noticing requirements.

The Appellant was required to report within 10 days of child [REDACTED] mother moving into her household. Although there was no testimony as to exactly when child [REDACTED] mother did move into her household, in reviewing the evidence presented, it can be established that child [REDACTED] mother was in the household at the very least in July and should have been reported on her July 25, 2023, review for benefits. Additionally, the Appellant was required to report that child [REDACTED] moved out of her household. These changes in household circumstances would have affected the Appellant’s September benefits. Thus, because the Appellant failed to report these changes in her household, the overissuance of cash assistance benefits was the result of client error.

Based upon review of the evidence and testimony presented, the Respondent showed by a preponderance of evidence that it correctly established that the Appellant was not entitled to WVWORKS/WVEAP caretaker relative cash assistance benefits due to a client error. The Respondent’s decision to establish a repayment claim is affirmed.

CONCLUSIONS OF LAW

- 1) Policy states that when a client fails to report a change in a timely manner, a repayment claim is established if the change would have decreased benefits.
- 2) The Appellant failed to report (at the very least on her July 25, 2023 review) that the mother of child [REDACTED] was living in her household.
- 3) The Appellant failed to report that child [REDACTED] and her mother moved out of her household in August 2023.

- 4) Because the Appellant failed to report the changes in her household, she was overissued WV WORKS benefits for the months of September, October, November and December 2023.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision establish a client error repayment of the WWORKS/WVEAP cash benefits.

ENTERED this 29th day of May, 2024.

Lori Woodward, Certified State Hearing Officer