



July 11, 2024

[REDACTED]

RE: [REDACTED] v. WVDoHS
BOR Action No.: 24-BOR-2410

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 Human Services. These same laws and regulations are used in all cases to ensure 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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: Marsha Hizer, BFA

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

██████████,

Appellant,

v.

Action Number: 24-BOR-2410

**WEST VIRGINIA DEPARTMENT OF
HUMAN SERVICES
BUREAU FOR FAMILY ASSISTANCE,**

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 originally convened on June 26, 2024. Due to the Appellant's medical issues the hearing was reconvened on July 10, 2024. The appeal was filed June 11, 2024.

The matter before the Hearing Officer arises from the May 24, 2024 decision by the Respondent to deny the Appellant's application for the Indigent Burial Program (IBP) for his deceased mother.

At the hearing, the Respondent appeared by Marsha Hizer and Hannah McComas, both Economic Service Supervisors. The Appellant appeared pro se. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Denial of Application
- D-2 Application for Burial Benefits
- D-3 Burial Billing Form
- D-4 Affidavit of Responsible Relative
- D-5 Pay verification May 1, 2024, May 8, 2024, May 15, 2024 and May 22, 2024

Appellant's Exhibits:

A-1 Pay verification from January 2024 through June 2024

A-2 Employer's Statement

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's mother deceased on May 22, 2024.
- 2) On May 24, 2024, the Appellant completed an application for IBP benefits. (Exhibit D-2)
- 3) The Appellant's household consisted of himself, his spouse and his deceased mother.
- 4) The Appellant was the responsible relative and his financial situation did not permit him to pay toward the maximum allowable payment for burial services for his mother. (Exhibit D-3)
- 5) The only income available to the household is from the Appellant's spouse's earned income.
- 6) The Appellant provided thirty-day income amounts of May 1, 2024-\$643.67, May 8, 2024-\$551.47, May 15, 2024-\$505.35 and May 22, 2024-\$563.71.
- 7) Two of the paystubs presented May 1, 2024 and May 22, 2024 included overtime hours.
- 8) The Respondent determined overtime was consistent and calculated overtime income in the overall income calculation.
- 9) The Respondent determined the Appellant's monthly household's income at \$2434.01 ($643.67+551.47+505.35+563.71=\$2264.20/4=\$566.05*4.3=\2434.01) (Exhibit D-1)
- 10) The income limit for a two-person assistance group is \$2266.00 or 133% of the Federal Poverty Level.
- 11) On May 24, 2024, the Respondent issued a Denial of Application indicating that the household's application for the Indigent Burial Program had been denied due to excessive income.

APPLICABLE POLICY

West Virginia Income Maintenance Manual Chapter 20.3.2.B documents:

Resources of the deceased shall consist of readily available liquid assets such as, but not limited to, life insurance policies, burial trust funds, cash, checking and/or savings accounts, certificates of deposits, etc. The Worker must verify the availability of these liquid assets prior to approval of the burial application. If the information is not known by the responsible relative it must be explained to the responsible relative they are attesting there are not sufficient resources by signing the DFA-67- A and DFA-BU-1, and that a claim will be placed against the estate of the deceased. If the applicant indicates that, for an adult burial, the deceased had at least \$2,200 in available resources, the Worker must find the application ineligible for benefits. The income limit for the deceased must not have been more than 133% of the FPL. The income verification would just be for the deceased if the applicant is not a responsible relative. The income counted would be for the 30 days prior to the date of death. The SNAP budgeting rules would be followed for counting the deceased's income.

West Virginia Income Maintenance Manual Chapter 20.3.3.C documents:

A responsible relative is a relative who is liable for the burial costs of the deceased, i.e., spouse, children, parents, or siblings. If the applicant is a responsible relative, then the Worker must verify their income.

West Virginia Income Maintenance Manual Chapter 20.3.4.D documents:

As indicated in the Public Welfare Law §9-5-9, liability of relatives for support, certain relatives of the deceased who are financially able shall be responsible to pay the expenses of burial. These relatives are listed in the order of priority:

- The spouse (even if living apart, if they are still legally married)
- The children
- The parents
- The siblings

"Financially able" is defined as the responsible relative's financial ability to make payment toward or the entire maximum payment allowed by the DoHS. The income of the responsible relative must be verified. The income limit is 133% of the FPL. The needs group and income group would consist of the responsible relative and those living with the responsible relative, at the time of application. The most recent 30 days of income would be counted starting with the date of application. The budgeting rules would follow SNAP Policy. The applicant has 3 days to provide income verification or the application will be denied if income is not verified within that time.

The income of the deceased is not counted.

In many situations, other relatives (spouse, nephew, niece, etc.) who are not legally liable for payment of burial costs will take the responsibility for arranging the burial and make applications for burial expenses.

West Virginia Income Maintenance Manual Chapter 20.3.6

The income limit for the indigent burial program is 133% of the federal poverty level. This would be the income limit for the responsible relative. The household size and income would include all individuals that reside in the same household as the responsible relative. The deceased and their income would not be included in this. There is no asset test for the responsible relative.

If the applicant is not considered a responsible relative (spouse, child, parents, siblings) then the income does not need to be verified. The income limit applies to responsible relatives only.

If a responsible relative applies and is over the income limit someone else cannot reapply in place of the responsible relative. The burial would remain denied once a responsible relative comes forth and is found over the income limit.

The maximum allowable payment is the limit on the amount of payment that can be received by the funeral home when the Department of Human Services (DOHS) participates in the payment of a burial. The extent of the DOHS's participation, or the amount of the program benefit, is determined by the burial rate and, when applicable, the amount which exceeds the maximum allowable payment.

The maximum allowable payment is not to be confused with the burial rate. The maximum burial rate is the amount the DOHS will make toward the cost of all funeral-related expenses. The maximum burial rate is \$1,000.

The maximum allowable payment is also used to establish eligibility for a burial payment in relation to the resources of the deceased and to contributions made by responsible relatives.

Finally, the maximum allowable payment is used to establish the amount of resources (i.e., payment received from sources other than the DOHS) that may be received by the funeral home before the maximum burial rate is reduced.

The maximum allowable payment for burials may not exceed \$2,200. The amount of resources that are exempted before being applied to the burial rate is \$1,200 (exempted resources amount of \$1,200 + burial rate of \$1,000 = \$2,200). Therefore, the DOHS will not participate in the burial costs when the total amount of resources received by the Funeral Home Director for a burial is \$2,200 or more. When the

amount of resources exceeds \$1,200 but is less than \$2,200, that amount, the excess, is less than \$2,200 this amount will be deducted from the burial rate from the \$1,000. The income limit is 133% of the FPL.

West Virginia Income Maintenance Manual Chapter 4.4.1.B documents:

The Worker must consider information about the client's income sources before deciding which income to use. The Worker must follow the steps below for each old income source.

Step 1: Determine the amount of income received by all persons in the Income Group (IG) in the 30 calendar days prior to the application/redetermination date, or interview date when the interview is completed on a different day than when the application is received. The appropriate time period is determined by counting back 30 days beginning with the calendar day prior to the date of application/redetermination. However, if the interview is completed on a different day than when the date the application/redetermination is received, the 30-day look-back period could begin the day before the interview date. The income from this 30-day period is the minimum amount of income that must be considered. When, in the Worker's judgment, future income may be more reasonably anticipated by considering the income from a longer period of time, the Worker considers income for the time period he determines to be reasonable. Whether the Worker considers income from the prior 30 days, or from a longer period of time, all of the income received from that source during that time period must be considered. All pay periods during the appropriate time period must be considered and must be consecutive. If the client provided sufficient income verification on the date the application/redetermination is received, then additional verification is not required at interview. The year-to-date amounts on check stubs may only be used when the client has verification of all payment amounts whether used or not but is missing one.

Step 2: Determine if the income from the previous 30 days is reasonably expected to continue into the new certification period. If it is not expected to continue, the income from this source is no longer considered for use in the new certification period. If it is expected to continue, determine if the amount is reasonably expected to be more or less the same. If so, the income source is used for the new certification period and treated according to Section 4.4.1.D below. If it is not expected to continue at more or less the same amount, the income source is used for the new certification period and treated according to Section 4.4.1.C below.

Step 3: Record the results of Step 2, including the amount of income, why the source is or is not being considered for the new certification period, the client's statement about continuation of the income from this source, the time period used, and, if more than the previous 30 days, the reason additional income was considered. Once the Worker has determined all of the old sources of income to

consider and the time period for which they are considered, he must then determine if any source should be considered for future income.

DISCUSSION

On May 24, 2024, the Appellant applied for the Indigent Burial Program (IBP) on behalf of his deceased mother. The Respondent determined that the Appellant's total monthly household of \$2434.01, exceeded the eligibility threshold of 133% of the Federal Poverty Level of \$2266.00, and denied the IBP application. The Respondent must prove by a preponderance of the evidence that the countable income exceeded program guidelines for eligibility.

The Appellant is considered a responsible relative (spouse, child, parent, or sibling) and liable for burial cost of the deceased. The income of the responsible relative and those residing with the responsible relative must be verified; therefore, the Appellant and his spouse's income are considered for eligibility purposes. At the application, the Appellant provided thirty days of income from April 25, 2024 through May 24, 2024. Those pays included May 1, 2024-\$643.67, May 8, 2024-\$551.47, May 15, 2024-\$505.35, and May 22, 2024-\$563.71. Two of the pays, specifically, May 1, 2024 and May 22, 2024, included overtime hours. The Respondent representatives indicated that the overtime hours could be reasonably anticipated and included those hours in the monthly income calculation. The Respondent determined the Appellant's household's total income to be \$2434.01. This was determined by averaging the four total pays for a total of \$566.05 and multiplying it by 4.3 (conversion of a weekly pay average to a monthly amount) for a total of \$2434.01. Marsha Hizer, Economic Service Supervisor testified that the household's total monthly income exceeded income limit of \$2266 or 133% of the Federal Poverty Level which resulted in a denial of the IBP application. Ms. Hizer indicated that the Respondent considered removing the overtime hours for the income calculation, but the monthly income still exceeded the established Federal Poverty Level.

The Appellant provided testimony in which he did not agree with the IBP policy and that the funeral home, which provided a proper burial for his mother, should be reimbursed. The Appellant provided testimony that due to his own financial hardship he is unable to pay for the burial. The Appellant provided information (Exhibit D-2) which indicated that his spouse is employed for 41 weekly hours and disputed the utilization of overtime hours.

Governing policy stipulates that budgeting rules for the IBP follow the Supplemental Nutrition Assistance Program policy and that the income limit for the program is 133% of the Federal Poverty Level or \$2266.00. The Appellant's spouse is employed and the Respondent considered the past income, which included the thirty calendar days prior to the application. Because two of the pays within the timeframe included overtime hours, the Respondent determined that such income was reasonably expected to continue and included the income in the calculation.

A review of evidence reveals that the reported pay verifications included year-to-date overtime earnings which document that the Appellant's spouse has received overtime hours through the current year. Therefore, it is reasonable to assume that such income would continue and should be considered in part of the eligibility determination. Even considering the employer's statement

submitted for evidence which indicated 41 weekly hours and her current rate of pay of \$12.81 and overtime pay rate of \$6.41, the household income still exceeds the Federal Poverty Level income guidelines. (41 weekly hours multiplied by \$12.81=\$525.21, 1 overtime hour at \$6.41 for total weekly \$531.62 multiplied by the monthly conversion rate of 4.3=\$2285.96, which exceeds the \$2266.00 Federal Poverty Level income guideline)

Whereas the responsible relative's household income exceeded the income threshold for IBP, the Respondent was correct in its decision to deny the Appellant's application.

CONCLUSIONS OF LAW

- 1) A responsible relative including spouse, children, parent or sibling is liable for the burial costs of the deceased when applying for benefits under the IBP.
- 2) The income group for the IBP includes the responsible relative and those residing in the same household.
- 3) The Appellant is the responsible relative and is liable for the burial cost for his deceased mother.
- 4) The total monthly income for the IBP cannot exceed 133% of the Federal Poverty Level or \$2266.00.
- 5) The Appellant's total household income for a thirty-day period from May 24, 2024 through April 25, 2024 is \$2434.01.
- 6) The Appellant's total household income exceeded the income guidelines for the IBP.

DECISION

It is the decision of the State Hearing Officer to uphold the decision of the Respondent to deny the Appellant's application for the Indigent Burial Program.

ENTERED this _____ day of July 2024.

Eric L. Phillips
State Hearing Officer