

12-0775

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2
2012 MAY 17 PM 3:57
KATHY S. STUCKY
KANAWHA COUNTY CLERK OF COURT

PATRICIA HUDSON,
Petitioner,

v.

Civil Action No. 12-AA-5
Judge James C. Stucky

MICHAEL J. LEWIS, Secretary,
WV Department of Health & Human
Resources; and
STEPHEN M. BAISDEN, State Hearing
Officer, WV Department of Health &
Human Resources,

Respondents.

FINAL ORDER

This matter comes before the Court on Petitioner Patricia Hudson's (hereinafter "Petitioner") "Petition for Appeal" filed January 17, 2012, from the Decision of the State Hearing Officer for the West Virginia Department of Health and Human Resources (hereinafter "Respondent"). After reviewing the Petition, the briefs filed in this matter, the entire record, and the applicable legal authority, this Court **AFFIRMS** the Decision of the Officer.

STANDARD OF REVIEW

West Virginia Code § 29A-1-3(c) provides that "contested cases involving . . . the receipt of public assistance" are statutorily exempted from the WV Administrative Procedures Act. Judicial review of administrative agency decisions involving public assistance is properly obtained pursuant to W. Va. Code § 53-3-1 through the writ of certiorari. Syl. Pt. 2, *State ex rel. Ginsberg v. Watt*, 168 W. Va. 503, 285 S.E.2d 367

(1981). Furthermore, "on certiorari the circuit court is required to make an independent review of both law and fact in order to render judgment as law and justice may require." Syl. Pt. 3, *Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276 (1982). Unless otherwise provided by law, the standard of review by a circuit court in a writ of certiorari proceeding under W. Va. Code § 53-3-3 (1923) (Repl. Vol. 2000) is *de novo*. Syl. Pt. 2, *State ex rel. Prosecuting Attorney of Kanawha County v. Bayer Corp.*, 223 W. Va. 146, 672 S.E.2d 282 (2008).

FACTS AND DISCUSSION

A brief recitation of the facts is as follows: In June, 2011, Respondent's employee referred this matter to the Investigation and Fraud Management Unit (hereinafter "Fraud Unit") after Petitioner took her spouse, whom she report to be separated, to physician's appointments for nearly every office visit. Following an investigation, the Fraud Unit determined that Petitioner and her spouse lived together. A repayment claim of \$1,985.00 for the months of May, 2010 to September, 2011 was established against Petitioner. Petitioner requested a fair hearing to protest the repayment claim on September 13, 2011. The original hearing was scheduled for October 20, 2011, but was ~~rescheduled at Petitioner's request for November 21, 2011. Following the hearing, State~~ Hearing Officer Stephen M. Baisden (hereinafter the "Officer") issued the decision to uphold the proposal of Respondent to establish a repayment claim against Petitioner.

WV DHHR Common Chapters Manual governs the presentation of hearings held by the Board of Review. The burden of proof is first on the Respondent to prove, by preponderance of the evidence, that its adverse action was correct, then shifts to the applicant or recipient to prove, again by a preponderance of the evidence, that the

Respondent's action was correct. WV DHHR Common Chapters Manual, § 710.20F.

The applicable policy, West Virginia Income Maintenance Manual, Chapter 9.1.A.1(b), states, in pertinent part:

Individuals or groups of individuals living with others, but who customarily purchase food and prepare meals separately are an [Assistance group or] AG. Customarily purchasing and preparing food separately means that, during the certification period, the client actually purchases and prepares his food separately from the others in the household over 50% of the time, except for an occasional shared meal. This occasional sharing for food does not interfere with his separate AG status. EXCEPTION: The following individuals who live together must be in the same AG, even if they do not purchase and prepare meals together:

...
-Spouses are individuals who are married to each other under state law.

Petitioner contends that she and her spouse were separated and not living together during the repayment period. Evidence submitted at the hearing indicated that Petitioner's spouse renewed his driver's license with the address at which Petitioner receives her public assistance benefits. Furthermore, Petitioner's spouse provided this address on a SNAP telephone review signed March 28, 2011.¹ Petitioner acknowledged that her spouse lived on her property, obtained electricity from her residence, and shared utility bills. Petitioner further testified that her home was her spouse's home as well, and he would be welcomed home if he were to quit drinking. At the hearing, an income maintenance worker testified that Petitioner informed her that Petitioner and her spouse were separated, but that "he lived behind her and he took care of her and she took care of him." Sufficient evidence indicates that Petitioner and her spouse shared utilities and property where Petitioner receives her public assistance benefits; therefore, it is logical to conclude that Petitioner and her spouse lived in the same household

¹ Petitioner's spouse also provided Petitioner's telephone number and joint checking account on the review form.

during the repayment period of May 2010 to September 2011.

The Court has reviewed the petition, the entire record, the briefs filed in this matter, and all relevant legal authorities. Accordingly, the Court concludes that the Respondent's establishment of a repayment claim against Petitioner's SNAP benefits is correct.

RULING

For the above reasons stated in this order, this Court **ORDERS** the following: the decision of the Officer is **AFFIRMED**. This matter is **DISMISSED** and **STRICKEN** from the docket of the Court. The Clerk of the Court shall send copies of this Order to

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Stephen Baisden, State Hearing Officer
Bldg 6, State Capitol Complex, Rm 817-B
Charleston, WV 25305

Enter this Order the 17th day of May, 2012.



James C. Stucky, Judge
Thirteenth Judicial Circuit

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF May 2012
CATHY S. GATSON, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA