# WEST VIRGINIA CODE: §21a-7-11

**§21A-7-11. Benefits pending appeal.**

(a) Benefits found payable by decision of a deputy, appeal tribunal, the board or court shall be immediately paid up to the week in which a subsequent appellate body renders a decision, by order, finding that benefits were not or are not payable.

(b) If, at any appeal stage, benefits are found to be payable which were found before the appeal stage to be not payable, the commissioner shall immediately reinstate the payment benefits. (c) If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him or her pursuant to a prior decision, the amount of benefits paid are considered overpaid.

(1) The commissioner shall recover such amount by civil action or in any manner provided in this code for the collection of past-due payment and shall withhold, in whole or in part, as determined by the commissioner, any future benefits payable to the individual and credit the amount against the overpayment until it is repaid in full.

(2) The commissioner may not bill an employer under section three-a, article five of this chapter for overpaid amounts of benefits paid to a claimant. In any instance where the commissioner has billed an employer, the employer has paid the billed amount and the amount is determined under this section to be an overpayment, the commissioner shall reimburse the employer for the amount of the overpayment paid by the employer from the Unemployment Compensation Trust Fund, if allowed by federal law, and if not from the Administrative Fund: Provided, That no employer shall be entitled to any payment under this subdivision unless such employer has filed all requested adequate separation information within the required time frame.

(d) If the final decision in any case determines that the claimant was not lawfully entitled to the benefits paid to him or her pursuant to a prior order any benefits paid pursuant to the prior order, are not chargeable to the employer's account.

(e) Whenever the commissioner finds that a claimant has received back pay at his or her customary wage rate from his or her employer the employee is liable to repay the benefits, if any, paid to the individual for the time he or she was unemployed.

(f) In any case in which, under this section, an employee is liable to repay benefits to the commissioner, the amount is collectible by civil action in the name of the commissioner.

(g) Whenever an employer subject to this chapter is required to make a payment of back pay to an individual who has received unemployment compensation benefits during the same period covered by the back pay award, the employer shall withhold an amount equal to the unemployment compensation benefits and shall repay the amount withheld to the

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Unemployment Compensation Trust Fund. If an employer fails to comply with this section, the commissioner may recover from the employer the amount of unemployment compensation benefits which should have been withheld by a civil action.

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