



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
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Jolynn Marra
Interim Inspector General

September 26, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:19-BOR-2443

Dear Ms. [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,

Danielle C. Jarrett
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29
cc: Lisa Snodgrass, Department Representative

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

████████████████████,

Appellant,

v.

BOR Action Numbers: 19-BOR-2443

**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 Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on September 25, 2019, on an appeal filed September 23, 2019.

The matter before the Hearing Officer arises from the September 12, 2019 decision by the Respondent to deny the Appellant's application for Emergency Assistance (EA) payment and to establish a 4th WV WORKS sanction.

At the hearing, the Respondent appeared by Lisa Snodgrass, Family Support Specialist. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Decision, dated September 12, 2019
- D-2 Employment Statement, dated September 13, 2019
- D-3 Referral and Communications Form (Social Services – Income Maintenance), dated July 12, 2019
- D-4 Notice of Decision, dated August 19, 2019
- D-5 Notice of Decision, dated August 12, 2019
- D-6 Notice of Pending Closure of Benefits, dated August 12, 2019
- D-7 West Virginia Department of Health and Human Resources (WV DHHR) West Virginia Works (WV WORKS) Personal Responsibility Contract (PRC), dated February 4, 2019
- D-8 WV DHHR Orientation to WV WORKS, dated January 30, 2019
- D-9 WV DHHR Orientation to WV WORKS, dated January 30, 2019

- D-10 WV DHHR Acknowledgment of Automatic Assignment of Support Rights and of Cooperation Requirements, dated January 28, 2019
- D-11 WV DHHR Rights and Responsibilities (R&R) Form, dated January 28, 2019
- D-12 WV WORKS Self-Sufficiency Plan (Original), dated June 6, 2019
- D-13 Notice of Scheduled Home Interview Appointment, dated August 13, 2019
- D-14 eRAPIDS computer system screenshot printouts of WV WORKS Personal Responsibility Contract Sanction Request
- D-15 eRAPIDS computer system screenshot printouts of Case Comments, dated July 19, 2019 through September 25, 2019; and eRAPIDS computer system screenshot printout of Individual Comments, dated August 13, 2019 through August 27, 2019
- D-16 West Virginia Income Maintenance Manual (WV IMM) §§ 20.2 through 20.2.2.F.2
- D-17 eRAPIDS computer system screenshot printout of Emergency Assistance, dated September 11, 2019
- D-18 WV IMM – Chapter 4 – Appendix A: Income Limits

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 was a recipient of WV WORKS benefits.
- 2) The Appellant’s WV WORKS Assistance Group (AG) consisted of the Appellant and her two (2) children.
- 3) On July 12, 2019, the Appellant missed her appointment with the Bureau of Child Support Enforcement (BCSE). (Exhibit D-3)
- 4) On July 19, 2019, the Respondent advised the Appellant that she needed to contact BCSE regarding her missed appointment. (Exhibit D-15)
- 5) On August 12, 2019, notice of denial was issued to the Appellant that a “Personal Responsibility Contract (PRC) sanction has been applied to her Cash Assistance group effective September 1, 2019.” (Exhibit D-5)
- 6) The August 12, 2019 denial notice stated that “this is the 4th sanction applied to your Cash Assistance group and will continue for 12 months.” The notice further advised that the Appellant was scheduled a good cause interview and a case staffing appointment for August 22, 2019. (Exhibit D-5)

- 7) On August 13, 2019, notice of appointment was issued to the Appellant that she had a home interview scheduled for August 21, 2019. (Exhibit D-13)
- 8) On August 19, 2019, notice of denial was issued to the Appellant that effective September 1, 2019, a third-level sanction would be applied to her AG and would continue for twelve (12) months for failure to meet the terms of the PRC by her failure to cooperate with BCSE. The notice further advised the Appellant that “if this appointment is not kept, the sanction listed above will be applied to your benefits.” (Exhibit D-4)
- 9) The Respondent failed to conduct the Appellant’s home interview appointment scheduled for August 21, 2019.
- 10) On August 22, 2019, the Appellant failed to appear for her good cause appointment. As a result, good cause could not be established. (Exhibit D-15)
- 11) The Appellant’s 4th sanction for failure to cooperate with BCSE is effective September 1, 2019 through August 30, 2020. (Exhibit D-14)
- 12) On September 11, 2019, the Appellant applied for EA payment for electric. At the time of application, the Appellant reported that she was employed part-time. (Exhibit D-15)
- 13) On September 11, 2019, the Respondent pended the Appellant’s EA application for verification of her employment income. (Exhibit D-15)
- 14) On September 12, 2019, the Appellant was advised that her application for EA payment for electric had been denied due to the Appellant’s “income is more than the gross income limit for you to receive benefits”, the Appellant “did not cooperate to relieve emergency situation”, and “three months not over for WV WORKS sanction.” (Exhibit D-1)
- 15) On September 13, 2019, the Appellant submitted her employment statement which indicated the Appellant started working at [REDACTED] on July 26, 2019 and was paid weekly at \$11.00 an hour. (Exhibit D-2)
- 16) The Appellant received her first paycheck on August 4, 2019, in the amount of \$256.61. (Exhibit D-2)
- 17) On September 16, 2019, the Respondent denied the Appellant’s application for EA payment for electric. (Exhibit D-15)
- 18) On September 23, 2019, the Appellant again applied for EA payment for electric and was denied due to a 4th sanction applied on September 1, 2019. (Exhibit D-15)

APPLICABLE POLICY

WV IMM § 14.2.2.B.3 reads that PRC/SSP requirements may result in a sanction for non-cooperation with the BCSE.

WV IMM § 14.8.1 explains that sanctions are applied in the form of termination of WV WORKS benefits. The duration of the sanction for a first offense is ineligible for cash benefits for one (1) month; second offense is ineligible for cash benefits for six (6) months; and a third and all subsequent offenses are ineligible for cash benefits for twelve (12) months. The third and subsequent WV WORKS sanctions must be approved by the Division of Family Assistance (DFA) Temporary Assistance for Needy Families (TANF) Policy Unit. The Supervisor must send an email to TANF Policy Unit members and his Regional Program Manager once the prospective sanction is placed in the eligibility system with the date and time of the scheduled case staffing, along with a detailed summary on a DFA-WVW-75 outlining the reason for the sanction.

WV IMM § 14.8.3 reads that all benefit terminations due to imposition of a sanction requires 13-day advance notice.

WV IMM § 14.8.3 explains a case staffing is required before all sanctions start. The case staffing does not substitute for advance notice of any additional sanction or for any good cause appointments.

WV IMM § 18.7.4.C reads that a home visit is required within 60 days prior to the third WV WORKS sanction.

WV IMM § 18.7.4.D reads that when an appointment is scheduled in writing and the applicant misses the appointment, a sanction may be imposed without making a second appointment, unless the applicant has good cause or has contacted the Case Manager to reschedule the appointment.

WV IMM § 20.2.1 explains the EA program is used to assist individuals and families in a financial crisis when they are without available resources. EA provide short-term emergency financial assistance to individuals which are eligible.

WV IMM § 20.2.2.B explains that EA can be authorized during one period of 30 consecutive days in any 12 consecutive months. Payments can be made to meet needs which happened before this 30-day period or needs which may extend past the 30-day period.

WV IMM § 20.2.2.E AGs Subject to a Penalty provides in part:

When the applicant is a member of an AG for which any DHHR program benefit was reduced, denied, or closed because of a penalty for fraud, non-cooperation, or failure to pursue potential resources, the applicant and members of that program's AG are ineligible to receive EA. This policy applies to all other DHHR programs that apply penalties for non-cooperation, fraud, or failure to pursue potential resources. This policy also applies to all WV WORKS sanctions. AGs subject to

WV WORKS sanctions are ineligible for EA only during the first three (3) months of the sanction.

WV IMM § 20.2.2.F.1 Income Policy provides in part:

The Worker must determine availability of income to the applicant and all other members of the AG. All countable gross income received by any member of the AG, beginning with date of application and ending 29 days later, must be counted in determining eligibility for EA.

When considering countable income to determine eligibility, the Worker must use the following guidelines:

- Verification must be requested for the following:
 - Income that has been verified in the 30 days prior to the application; and
 - Changes in income.
- The total countable gross income of all members of the AG is compared to the Monthly Allowable Income Schedule in Appendix A.
- Income received prior to the 30-day period of consideration is an available asset if retained in the 30-day period of consideration.

WV IMM Chapter 4 – Appendix A: reads that the income limit for EA for a three (3) person AG is \$566.

DISCUSSION

The Appellant was a recipient of WV WORKS benefits. The Appellant's WV WORKS AG consisted of herself and her two (2) children. On September 11, 2019, the Appellant applied for EA for electric. At that time, the Appellant reported that she was employed part-time. The Respondent assessed the Appellant's eligibility based on the employer statement that the Appellant provided on September 13, 2019. The Respondent denied the Appellant's EA application due to her AG income exceeding the EA income eligibility limit and due to an active sanction against the Appellant for failure to cooperate with BCSE. The Appellant contested the Respondent's decision to apply a 4th sanction to her case and testified that she is no longer receiving employment income.

The Respondent had to demonstrate by a preponderance of evidence that the Appellant's WV WORKS benefits were sanctioned correctly and that the Appellant's AG income exceeded the EA income eligibility limit. On September 11, 2019, when the Appellant reported to the Respondent

that she was employed part-time, the Respondent pended the Appellant's EA application for verification of her income.

The Respondent testified the Appellant's countable income was \$575, which is over the EA income limit for her AG size of three (3). The Appellant reported that she is paid weekly at \$11.00 per hour and received her first paycheck on August 4, 2019, in the amount of \$256.61. The Appellant testified that she has not received income since her August 4, 2019 paycheck. The Respondent did not indicate how the \$575 in countable income was determined for the Appellant.

On September 16, 2019, the Respondent denied the Appellant's application for EA payment for electric. However, policy states that all countable gross income received by any member of the AG, beginning with date of application and ending 29 days later, must be counted in determining eligibility for EA. It is noted that the Respondent failed to use the correct countable gross income for the Appellant's EA application.

The Respondent testified that the Appellant's EA application was also denied because the Appellant is under a WV WORKS 4th sanction. The Respondent indicated that on July 12, 2019, the Appellant missed her appointment with BCSE and that on July 19, 2019, the Respondent advised the Appellant that she needed to contact BCSE regarding her missed appointment. On August 12, 2019, the Respondent issued a denial notice to the Appellant advising her that she was scheduled a good cause interview and a case staffing appointment for August 22, 2019. On August 13, 2019 a notice of appointment was issued to the Appellant that she had a home interview scheduled for August 21, 2019. The Respondent failed to conduct the Appellant's home interview appointment on August 21, 2019. It is unknown why the Respondent did not conduct the Appellant's home interview appointment.

The Respondent testified that on August 22, 2019, the Appellant failed to appear for her good cause and case staffing appointment. As a result, good cause could not be established. The Respondent testified the Appellant's 4th sanction for failure to cooperate with BCSE is effective September 1, 2019 through August 30, 2020.

Policy requires the Case Manager take several actions prior to imposing a sanction and case closure, including making a home visit to address the 4th sanction and filing a detailed summary on a DFA-WVW-75 outlining the reason for the sanction. Policy is clear that a 3rd and subsequent sanctions must be approved by the DFA/TANF policy unit.

Evidence failed to demonstrate that the Appellant was ineligible for EA payment for electric. Evidence demonstrated that the Case Manger failed to take the appropriate steps in applying a sanction. Because of lack of documentation, conflicting information, failure to notify the DFA/TANF policy unit, and absence of both a required home visit and case staffing appointment, the Respondent failed to establish that the sanction was appropriate and its decision of denial cannot be affirmed.

CONCLUSIONS OF LAW

- 1) The Appellant's AG included three (3) persons.
- 2) Policy provides that to be eligible for EA, a three-person AG must have income equal or below \$566.
- 3) It is unknown if the Appellant's income exceeded the EA income eligibility limit.
- 4) Whereas the Appellant's Case Manager failed to report the possible sanction to the DFA/TANF Policy Unit, and failed to complete the prior to 3rd sanction home visit and case staffing appointment as required by policy, the Respondent's decision to apply a sanction and terminate the Appellant's WV WORKS benefits, effective September 1, 2019, was incorrect.
- 5) The Respondent incorrectly denied the Appellant's EA application.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to apply a 4th sanction to the Appellant's WV WORKS benefits, effective September 1, 2019, due to failure to cooperate with BCSE. It is further **ORDERED** that the matter regarding her actual income is hereby **REMANDED** to the Department to determine the amount of received by the Appellant to include income received on the date of application and 29 days thereafter.

ENTERED this _____ day of September 2019.

Danielle C. Jarrett
State Hearing Officer