



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
416 Adams St.
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

September 14, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-2307

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,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Katherine Bond, Esq., Assistant Attorney General

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

██████████,

Appellant,

v.

Action Number: 15-BOR-2307

**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 10, 2015, on an appeal filed June 15, 2015.

The matter before the Hearing Officer arises from the June 3, 2015 decision by the Respondent to apply a 3-month sanction against the Appellant's WV WORKS benefits effective July 1, 2015.

At the hearing, the Respondent appeared by Katherine Bond, Esq., Assistant Attorney General. Appearing as a witness for Respondent was William "Bill" Swiger, Family Support Supervisor (FSS). The Appellant appeared pro se. Appearing as a witness for the Appellant was her husband, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV Income Maintenance Manual §24.3
- D-2 WV WORKS- Self-Sufficiency Plan (SSP), signed by Appellant on 5/21/15
- D-3 Case Comments for the period of 6/1/15 through 6/15/15
- D-4 Orientation to WV WORKS – Purpose
- D-5 WV Income Maintenance Manual §13.9
- D-6 Notice of Sanction dated 6/3/15

Claimant's/Appellant's Exhibits:

- C-1 Request for verification dated 6/15/15 and verification of employment received by Respondent on 6/25/15

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 matter under appeal is a second-level sanction in the Appellant's WV WORKS case. The Appellant abandoned her first-level sanction hearing (Case #15-BOR-2093) by an Order of Abandonment, entered on July 6, 2015.
- 2) On or about June 3, 2015, Appellant was notified (D-6) that a [second] Personal Responsibility Contract (PRC) sanction was applied to her WV WORKS case effective July 1, 2015 through September 30, 2015. Policy cited on the notice includes WV Income Maintenance Manual §§1.25.T, 13.9 and 24.4.D. This notice goes on to indicate that a good cause interview was scheduled for the Appellant on June 15, 2015 at 9 a.m.
- 3) Respondent's witness, Family Support Supervisor (FSS) Bill Swiger, proffered testimony to indicate Appellant attended her scheduled good cause appointment by phone, but good cause was not granted. WV WORKS benefits, however, have continued pending the hearing decision, as the appeal was filed timely.
- 4) Pursuant to WV Income Maintenance Manual §24.3, Appellant resides in a two-parent household and, therefore, adult members are required to participate in a work component an average of 35 hours per week.
- 5) Appellant signed her WV WORKS Self-Sufficiency Plan (D-2) on May 21, 2015, agreeing to complete 35 hours per week of SPOKES class and complete the SPOKES program by August 1, 2015.
- 6) Exhibit D-4, which is provided to all WV WORKS applicants at the time of orientation, reads, in pertinent part: "You must follow your PRC and SSP as well as the rules at your activity site."
- 7) Respondent's Exhibit D-3 includes case comments from the Appellant's electronic case file. FSS Swiger proffered testimony to indicate that the June 1, 2015 documentation summarizes a conversation that he had with the Appellant's SPOKES instructor that day. According to Mr. Swiger, the SPOKES instructor reported that he advised his students that beginning the following day, there would be no cell phone use in the class. Appellant reportedly contacted her husband (██████) who then spoke with the instructor on the phone, called him a name and threatened to harm the instructor's daughter and granddaughter if he enforced the rule with Appellant. Mr. Swiger documented that the SPOKES instructor then asked the Appellant to leave and she told him to make her leave. As a result, Mr. Swiger indicated that the Appellant was asked to leave SPOKES for failing to follow the rules at her activity site, and she was notified of the sanction in the letter dated June 3, 2015 (D-6).

- 8) As a matter of record, Respondent acknowledged that she was asked to leave SPOKES class, but indicated that she did not know why. Appellant, however, alleged that the SPOKES instructor slammed her arm in the door as she was leaving. Appellant's husband argued that it did not matter if his wife was asked to leave SPOKES because he began working on June 2, 2015 (Exhibit C-1), and he would satisfy the 35-hours per week work component requirement.
- 9) FSS Swiger testified that he was not made aware that Mr. [REDACTED] was employed until he was verbally advised during the telephonic good cause appointment on June 15, 2015. Respondent noted that the employment verification request was sent to the Appellant on June 15, 2015 (the day of the good cause appointment), and received on June 25, 2015, as requested. Respondent, however, indicated that it did not receive prior notice of Mr. [REDACTED] employment and the sanction was imposed due to the Appellant being asked to leave her work component for failing to follow the rules at her activity site.

APPLICABLE POLICY

Policy found in §1.25, T, of the WV Income Maintenance Manual provides that the Personal Responsibility Contract (PRC) form is a negotiated contract between the adult or emancipated minor members of the WV WORKS Assistance Group (AG) and the worker. Failure, without good cause, to adhere to the responsibilities contained in Part 1 of the PRC results in imposition of a sanction against the benefit group. Refusal or other failure, without good cause, to adhere to the Self-Sufficiency Plan (SSP) - Part 2 of the PRC - results in imposition of a sanction against the benefit group.

WV Income Maintenance §24.3, stipulates that a two-parent household requires participation in a work component an average of 35 hours per week.

WV Income Maintenance Manual §13.9 provides that when a member of the benefit group does not comply with the requirements found on his/her PRC or SSP, a sanction must be imposed unless the worker determines that good cause exists. A second-level sanction results in a 2/3 reduction in cash assistance for a period of three (3) months.

WV Income Maintenance Manual, Chapter 13.10, sets forth good cause criteria for failure to meet work requirements or adhere to the Personal Responsibility Contract. This policy goes on to state that the worker must determine whether or not the client is meeting the requirements, attempting to comply to the best of his ability, understands the requirements, and the sanction process. The worker has considerable discretion in imposing a sanction.

DISCUSSION

Policy provides that the PRC is a negotiated contract between the adult or emancipated minor members of the WV WORKS Assistance Group (AG) and the worker. Pursuant to policy, failure, without good cause, to adhere to the responsibilities contained in the PRC/SSP results in the imposition of a sanction against the benefit group, unless good cause exists. A second-level sanction results in a two-thirds (2/3) reduction in cash assistance for a period of three (3) months. As a matter of record, Appellant acknowledged that she was asked to leave SPOKES class. However, Appellant's testimony indicating that she did not know why she was asked to leave is unconvincing. Appellant clearly understood her being asked to leave stemmed from a conflict with the SPOKES instructor, as she alleged that he slammed her arm in the door when she was leaving. The facts of this case demonstrate that the Appellant was unwilling to cooperate with the implementation of the "no cell phone use" rule in SPOKES class, and based on the Respondent's documented conversation with the SPOKES instructor, Mr. [REDACTED] use of inflammatory language and threats against the instructor's family members, the SPOKES instructor determined that he could no longer offer instruction to the Appellant. These actions clearly demonstrate Appellant's unwillingness to comply - to the best of her ability - with the requirements of her PRC/SSP. The fact that Appellant's husband secured employment on June 2, 2015, and could have potentially satisfied the 35-hour work component participation requirement, does not change the incident that occurred on June 1, 2015 and Appellant's failure to comply with the May 21, 2015 Self-Sufficiency Plan.

CONCLUSION OF LAW

Pursuant to policy, the evidence demonstrates the Appellant failed to comply with the requirements of her PRC/SSP. As a result, the imposition of a second-level sanction is affirmed.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's proposal to apply a second-level sanction against the Appellant's WV WORKS cash assistance for a period of three (3) months.

ENTERED this ____ Day of September 2015.

**Thomas E. Arnett
State Hearing Officer**