



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

December 31, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-2860

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: Arlene Boone, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 15-BOR-2860

**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 October 1, 2015, on an appeal filed August 19, 2015.

The matter before the Hearing Officer arises from the June 12, 2015 decision by the Respondent to apply a third-level sanction and terminate the Appellant's WV WORKS benefits effective July 1, 2015.

At the hearing, the Respondent appeared by Arlene Boone, Family Support Specialist (FSS). The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- Exhibit-1 Hearing Summary
- Exhibit-2 WVIMM §§1.25, 13.9 and 24.4
- Exhibit-3 Personal Responsibility Contract (PRC) and Self-Sufficiency Plan (SSP) signed on 5/8/15 and TABE reminder letter dated 5/8/15
- Exhibit-4 Notice of Decision - PRC Sanction Notice dated 6/12/15 with good cause appointment scheduled on 6/22/15
- Exhibit-5 Electronic Mail (E-Mail) correspondence dated 6/26/15
- Exhibit-6 CMIC – documented PIN actions taken in the case for the period of 4/7/15 - 7/13/15
- Exhibit-7 CMCC – documented case actions for the period of 4/14/15 – 7/13/15
- Exhibit-8 Pre-hearing conference appointment letter dated 9/10/15

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) On May 8, 2015, Appellant completed orientation and an application for WV WORKS cash assistance, and signed her Personal Responsibility Contract (PRC) and Self-Sufficiency Plan (SSP) – Exhibit-3 - agreeing to take her TABE test on June 11, 2015 at the WVDHHR. Appellant was further provided a written reminder notice (also included in Exhibit-3) that provides the date, time and location of the TABE test, as well as instructions to assist Appellant in preparing for testing. This correspondence further states – “This is a PRC requirement; failure to attend will result in sanction of your benefits.”
- 2) Appellant failed to appear for the scheduled TABE test on June 11, 2015, and on June 12, 2015, Appellant was notified via a Notice of Decision (Exhibit-4) that a third-level sanction would be applied to her WV WORKS benefits effective July 2015. The Notice of Decision further indicates that a good cause appointment was scheduled for the Appellant on June 22, 2015 at 1:30.
- 3) Family Support Specialist Arlene Boone (Respondent’s representative) proffered testimony to indicate that the Appellant was a no-show/no-call for her scheduled good cause appointment on June 22, 2015, but indicated that when the Appellant telephoned the office to inquire about the pending sanction on June 26, 2015, she agreed to meet with the Appellant that day to conduct the good cause meeting. Respondent’s representative provided testimony consistent with documented case comments on June 26, 2015 (Exhibit-7) and testified the Appellant reported she had forgotten about the TABE test. Respondent noted that pursuant to the Notice of Decision dated June 12, 2015, the third-level sanction was imposed for the period of July 1, 2015 through September 30, 2015.
- 4) Appellant contended that Respondent was aware she had a baby on April 25, 2015, and believes Ms. Boone should not have required her to participate in the TABE test. Appellant purported that there is policy that exempts her for 12 weeks post-partum, she has children under the age of six (6) years old, she had been in a domestic violence shelter and she did not have child care. Appellant purported that she only agreed to take the TABE test because she knew she would not qualify for benefits if she did not sign the PRC and SSP.
- 5) Respondent purported that the Appellant did not report any barriers to complying with her PRC and SSP when negotiated on May 8, 2015, which occurred after the birth of her baby on April 25, 2015. Moreover, Respondent reported that the birth of a child and having children under the age of six (6) years old only provides for exemptions specific to work activities and does not include TABE testing.

APPLICABLE POLICY

Policy found in §1.25, T, of the West Virginia Income Maintenance Manual provides that the PRC form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the WV WORKS 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 (Part 2 of the PRC) results in imposition of a sanction against the benefit group.

Section 1.25, U, of the West Virginia Income Maintenance Manual provides that the Self-sufficiency Plan (SSP) is specific to each participant. The SSP lists the goals, as well as the tasks necessary to accomplish the goals, including specific appointments, assignments and activities for the participant. The participant and worker must sign and date the initial SSP and each change or addition when they occur. The signatures indicate their agreement to the initial SSP and subsequent changes. The participant's signature indicates that he understands and accepts the responsibility inherent in the Program.

West Virginia Income Maintenance Manual §24.4, B, provides Other Work (OW) activities component that is to be used to track time spent on tasks leading to self-sufficiency. Individuals placed in this component may still be considered in the federal participation rate calculation. The OW component will document the extent in which individuals are involved in other work-related activities that do not count toward the federal participation rates, but lead to their self-sufficiency.

Allowable activities include all of the following, but may include other documented Self-Sufficiency Plan (SSP) activities, agreed upon by the Customer and the Case Manager:

- Appointments with local resources that may be assisting with barrier removal activities;
- Arranging for child care;
- Arranging for housing;
- Arranging for transportation or working with Good News Mountaineer Garage;
- Child Support meetings or hearings;
- Development of the Self-Sufficiency Plan
- Emotional Health Inventory;
- Learning Needs Screening;
- Legal Aid appointments;
- Orientation;
- Self-Sufficiency Evaluations with Case Manager;
- TABE testing;
- Time spent with Case Manager during home visit;
- Work Keys testing;
- Working with CPS (MDT meetings);
- Working with Local Agencies such as KVC; and

Assignment of any of these activities must be recorded in eRAPIDS comments. All activities must be reviewed monthly. The Case Manager must update the case comments with the information on the status of the participant. Hours of participation may be documented using a Participation Time Sheet, DFA-TS-12 or by the Workers notes. The maximum amount of time a participant may be placed in the OW component is 60 days. Placement beyond the 60 day time limit will require DFA approval. Transportation will be the only allowable support payment associated with this component.

Every effort must be made to obtain countable hours for these PINS (contacting a school for educational hours, anticipating hours from employer statement, or JR for substance abuse or mental health treatment, etc). When there are absolutely no countable participation hours to enter for these individuals, a minimum of one hour of OW should be entered and documented in comments for making these contacts to obtain countable participation hours.

West Virginia 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 third-level sanction results in ineligibility for cash assistance for a period of three (3) months.

West Virginia Income Maintenance Manual, Chapter 13.10, sets forth good cause criteria for failure to meet work requirements or adhere to the Personal Responsibility Contract.

When the Worker determines that the client has good cause for failure to participate for one of the reasons listed in items A through E below, the participant must be placed in the appropriate good cause component. *(Note that items C & E in policy do not apply to Appellant's argument)*

(A) This component is used only for a single custodial parent caring for a child under the age of 1. It is a good cause period for a maximum of 12 months lifetime and it ends when the child attains the age of 12 months. It does not apply during the pregnancy period. Any remaining months can be applied following the birth of another child. This good cause reason may be applied when an applicant has given birth to a child and the child is under 12 months of age. The Worker must check the number of months previously used in the TF component before using this good cause reason.

If she has another child(ren) while she is a WV WORKS participant after using 12 months lifetime of TF, she will temporarily have good cause for not participating in an activity only for a 12-week postpartum period in accordance with the FMLA.

The 12 month good cause period begins the month that the child is born and extends to the end of the month preceding the child's 1st birthday. The parent no longer has good cause for not meeting the participation requirements beginning with the month in which the child reaches 12 months of age.

(B) Domestic violence and/or the need to protect abused children make participation impossible, dangerous, or embarrassing and the client accepts a referral to the Division of Children and Adult Services or a local domestic violence agency. The participant must comply with the requirements of the domestic violence agency plan. This period is limited to 6 months but may be extended

when extenuating circumstances exist and counseling continues at the recommendation of the Domestic Violence counselor. The Worker must maintain close contact with the Domestic Violence agency and monitor this plan regularly.

(D) A single parent can prove that appropriate child care is unavailable for his child, under age 6. The client must accept available child care unless it is an unreasonable distance from the individual's home or work site. Special needs children may require special child care arrangements. If so, the unavailability of suitable and appropriate care must be considered for special needs children. Circumstances involving unavailable child care must be reviewed monthly.

All of these good cause determinations must be recorded in Work Program comments. All good cause determinations must be reviewed monthly and the Worker must update the case comments with the information on the status of the participant. The Case Manager must enroll the participant in the Other Work Activities (OW) component to capture time spent with the customer during these monthly reviews. Once the good cause determination has been reviewed and the Case Manager determines that the good cause reason is still appropriate or the customer may be assigned to a countable work activity, the time spent for that review is entered as completed hours for the OW component. Comments are completed, and the participant is disenrolled from the OW component.

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 results in imposition of a sanction against the benefit group unless good cause exists. A third-level sanction results in ineligibility for cash assistance for a period of three (3) months.

Evidence received at the hearing reveals that the Appellant agreed to appear for TABE testing on June 11, 2015, as indicated in her signed PRC/SSP, on May 8, 2015. The Appellant did not report any barriers to prevent compliance with the requirements of her PRC/SSP, and was correctly placed in a "TF" component – a good cause component used when an applicant has given birth to a child and the child is under 12 months of age – and appropriately placed in an "OW" Other Work Activity, which includes TABE testing. While good cause can be established to exempt a WV WORKS participant from a work activity, there are no provisions in policy to exempt participants from OW activities, including TABE testing. Moreover, the Appellant did not contact Respondent on or before the day of her TABE test to indicate she would be unable to attend, and failed to appear for her good cause appointment scheduled on June 22, 2015. According to Respondent, Appellant was subsequently permitted an opportunity to establish good cause on June 26, 2015, at which time she indicated that she forgot about the scheduled TABE test.

CONCLUSION OF LAW

Pursuant to policy, the evidence demonstrates the Appellant failed to comply with the requirements of her PRC/SSP, and did not establish good cause when she was a no-show/no-call for her scheduled TABE test. As a result, the imposition of a third-level sanction effective July 2015 is affirmed.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's action to apply a third-level sanction and terminate the Appellant's WV WORKS cash assistance for a period of three (3) months effective July 1, 2015.

ENTERED this ____ Day of October 2015.

**Thomas E. Arnett
State Hearing Officer**