



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

March 30, 2017

[REDACTED]

RE: [REDACTED] v WV DHHR
BOR ACTION NO.: 17-BOR-1283

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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Robert Meade, Family Support Specialist

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

██████████,
Appellant,

v.

Action No: 17-BOR-1283

**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 convened on March 28, 2017, on an appeal filed February 16, 2017.

The matter before the Hearing Officer arises from the February 14, 2017 decision by the Respondent to apply a third sanction and close the Appellant's West Virginia WORKS benefits.

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

Department's Exhibits:

- D-1 Notice of imposed third-level WV WORKS sanction, dated February 14, 2017
- D-2 West Virginia Income Maintenance Manual Policy §§ 2.1, 10.4, and 13.9
- D-3 Case Summary and Benefit Summary computer screen print, dated November 1, 2014 through February 1, 2017
- D-4 Income Maintenance/Family Support office appointment letter, dated February 13, 2017
- D-5 Case Comments computer screen prints, dated January 2017 through February 2017
- D-6 Individual Comments computer screen prints, dated April 2017 through February 2017
- D-7 Personal Responsibility Contract (PRC) and Participation Timesheet, dated January 2017

- D-8 WV WORKS Personal Responsibility Contract Sanction Request computer screen print
- D-9 Notice of imposed first-level WV WORKS sanction and Employment Assistance Program (EAP) approval, dated April 1, 2015
- D-10 Income Maintenance/Family Support office appointment letter, dated April 14, 2015
- D-11 Notice of Decision, dated April 24, 2015

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 and participant in the Department's WV WORKS cash assistance program.
- 2) On April 1, 2015, the Appellant was notified that she was approved to receive cash assistance benefits through the Employment Assistance Program (EAP), but that her benefits decreased due to a first sanction that was applied to her case. (D-9)
- 3) On April 24, 2015, the Appellant was notified that her WV WORKS/WV EAP benefits would close effective May 31, 2015. (D-11)
- 4) The Appellant reapplied for WV WORKS benefits and was approved effective December 1, 2016. (D-3)
- 5) On February 14, 2017, the Appellant was notified that her WV WORKS case would close effective February 28, 2017, and a third sanction was applied to her case. (D-1)
- 6) The Appellant did not dispute the cause of the third sanction, but she contested the sanction number.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) §1.25.T instructs that failure, without good cause, to adhere to the responsibilities or any task listed on the Personal Responsibility Contract (PRC) after signature results in a sanction being imposed.

WV IMM §1.25.U instructs that the Self Sufficiency Plan (SSP) is a negotiated contract between each of the adult or emancipated minor members of the WV WORKS AG, or non-recipient Work-Eligible Individual(s), and the Worker, as the representative of the Department. The SSP is specific to each participant and is the Self-Sufficiency Plan. It lists the goals, as well as the tasks necessary to accomplish the goals, including specific appointments, assignments and activities for the adult/emancipated minor.

Completion and signature of the SSP form DFA-SSP-1 is required to be completed within 10 days of the initial contact when the client expresses an interest in applying for WV WORKS. The participant and Worker must sign and date the initial Self-Sufficiency Plan and each change or addition when they occur. The signatures indicate their agreement to the initial Self-Sufficiency Plan and subsequent changes. The participant's signature indicates that he understands and accepts the responsibility inherent in the Program.

The Self-Sufficiency Plan is a negotiated contract between the Department and the WV WORKS participant. It is a working document and revisions are made when either the participant or the Worker believes it necessary.

WV IMM §13.9 reads when a member of the WV WORKS AG does not comply with requirements on his or her PRC or SSP, a sanction must be imposed unless the Worker determines that good cause exists.

Sanctions are applied in the form of termination of benefits. The amount of the sanction is a fixated amount and is determined as follows:

1st Offense	Ineligibility for cash assistance for 1 month;
2nd Offense	Ineligibility for cash assistance for 3 months;
3rd Offense	Ineligibility for cash assistance for 6 months; and
4th and Subsequent Offense	Ineligibility for cash assistance for 12 months.

The Division of Family Assistance TANF Policy Unit must approve 3rd and subsequent sanctions.

WV IMM §13.10 requires that all mandatory Work-Eligible individuals be placed in a relevant and current component for tracking and monitoring purposes on approval date. The participant must remain in that component until either the case is closed or the Case Manager and participant agree to change the component. WV IMM §13.10 also sets forth reasons for granting good cause due to life events and/or problems and reads, "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." Failure or refusal to comply without good cause results in the imposition of a sanction.

WV IMM §24.4 outlines the worker's responsibility in developing and maintaining the PRC and SSP. The worker is required to provide the client with written notice of appointments, using an

approved appointment form. The appointment notice can be given to the client in person or mailed.

WV IMM 6.3 sets forth timeframes for setting a Good Cause appointment. When a letter scheduling an appointment is mailed, the Department worker must allow no less than seven (7) calendar days. The 7-day period begins the day following the date the letter is requested in the RAPIDS or when a manual letter is sent. If the Good Cause appointment is scheduled for a date prior to the seven (7) days, the participant and worker must agree on the date. Adverse actions require an advance notice period of 13 days before any action is effective.

DISCUSSION

The Department placed the Appellant on a third sanction for failure to comply with the requirements of the PRC. The Appellant did not dispute the reason for the sanction, but she contended that this should not be her third sanction.

Policy explains that a worker may impose a sanction due to the failure to adhere to responsibilities and assignments agreed upon on the PRC/SSP. Policy also allows the worker considerable discretion in not only applying the sanction, but also in what is considered good cause. Policy requires the Department to notify the client in writing of any adverse action taken on the client's case 13 days before the action is effective.

The Appellant stated that Department was incorrect in its decision to place a third sanction on her case. She testified that she had no knowledge of a first or second sanction previously being imposed. The Department's representative, Robert Meade, provided evidence which indicated the Appellant was notified of the first sanction on April 1, 2015, for failure to comply with the PRC. The sanction began on April 1, 2015. The Appellant was also approved for the Employment Assistance Program (EAP) on April 1, 2015, but she received a reduction in benefits due to the imposed sanction. The second sanction was placed on the Appellant on May 1, 2015, due an additional household member failing to complete orientation and sign a PRC. Mr. Meade acknowledged the Appellant was not notified of the second sanction, because her case closed the same month the sanction was imposed.

The Department was correct in its decision to apply a sanction effective February 28, 2017, but it is clear that the Department failed to properly notify the Appellant of sanctions imposed prior to February 28, 2017. The Department failed to provide advance notice of the adverse actions taken on the Appellant's case. Because the Department failed to provide advance notice, it is also possible the Appellant received the incorrect EAP payment amount.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, adverse actions require an advance notice period of 13 days before any action is effective.

- 2) The Department did not properly notify the Appellant of the first or second sanction applied to the Appellant's case in 2015, as required by policy.
- 3) Because the Appellant failed to comply with the PRC, the Department was correct to impose a sanction on February 28, 2017.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to impose a sanction on the Appellant's case February 28, 2017, but to **remand** the matter to the Department to determine the correct sanction number and recalculate the Appellant's EAP benefits. Following the re-evaluation, the Department shall notify the Appellant of its decision in writing, which shall include the right to a Fair Hearing.

ENTERED this 30th day of March 2017.

**Natasha Jemerison
State Hearing Officer**