



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

May 9, 2017

[REDACTED]

RE: [REDACTED] v WV DHHR  
BOR ACTION NO.: 17-BOR-1326

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-1326**

**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 April 27, 2017, on an appeal filed February 21, 2017.

The matter before the Hearing Officer arises from the December 19, 2016, decision by the Respondent to apply a fourth sanction and terminate the Appellant's WV WORKS benefits.

At the hearing, the Respondent appeared by Robert Meade, Family Support Specialist. Appearing as witnesses for the Respondent were Kathy Brumfield, Family Support Supervisor, Reba Parson, Family Support Supervisor, and Ashley Puffenbarger, Family Support Specialist. The Appellant appeared by her representative, ██████████, Paralegal with Legal Aid of West Virginia. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of imposed fourth-level WV WORKS sanction, dated December 19, 2016
- D-2 West Virginia Income Maintenance Manual Policy §§ 2.1, 10.4, and 13.9
- D-3 Case Summary and Case Benefit Summary computer screen prints, dated October 1, 2015 through March 1, 2017
- D-4 Self-Sufficiency Plan (SSP), Personal Responsibility Contract (PRC), and Referral for Strategic Planning in Occupational Knowledge for Employment and Success (SPOKES), signed November 10, 2016, and three (3) Participation Timesheets for November 2016

D-5 Case Comments computer screen prints, dated December 2016 through March 2017

**Appellant's Exhibits:**

- A-1 WV WORKS Case Management Staffing form, dated October 25, 2016
- A-2 Scheduled Office Interview Appointment, dated October 26, 2016
- A-3 Participation Timesheets, November 2016
- A-4 Personal Responsibility Contract (PRC) and Self-Sufficiency Plan (SSP), signed November 10, 2016
- A-5 Referral for Training/Services form, signed November 10, 2016
- A-6 Learning Needs Screening form, dated November 21, 2016
- A-7 Authorization to Return to School or Work, dated November 17, 2016
- A-8 Notices of Decisions, dated December 9, 2016
- A-9 Notice of Scheduled Appointment, dated December 9, 2016
- A-10 Notice of Scheduled Appointment, dated December 16, 2016
- A-11 Message from [REDACTED] supervisor to case worker
- A-12 E-mail from case worker requesting placement of fourth-level sanction with summary, dated December 16, 2016
- A-13 Notice of Decision, dated December 19, 2016
- A-14 Notice of Payments, dated January 13, 2017
- A-15 Notice of Scheduled Appointment, dated January 18, 2017
- A-16 Notice of Decision, dated January 31, 2017
- A-17 Notice of Scheduled Appointment, dated January 31, 2017
- A-18 Fair Hearing Request Form, dated February 22, 2017
- A-19 Letters regarding Appellant's timesheets, dated February 28, 2017
- A-20 Notices of Decisions, dated March 3, 2017
- A-21 Notice of Decision, dated March 6, 2017
- A-22 Case Comments computer screen prints, dated October 2016 through March 2017
- A-23 Individual Comments computer screen prints, dated November 2016 through March 2017
- A-24 West Virginia Income Maintenance Manual Policy §§13.9, 24.3, 24.10, 24.11, 24.13, 6.3, 13.10, 24.4, and 24.8

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) The Appellant was required to complete 85 hours of participation in an approved activity each month.

- 3) On November 10, 2016, the Appellant signed a new Self-Sufficiency Plan (SSP) and Personal Responsibility Contract (PRC) and changed her activity location from [REDACTED] to Strategic Planning in Occupational Knowledge for Employment and Success (SPOKES). (D-4 and A-4)
- 4) The Appellant was scheduled to attend SPOKES on November 14, 2016, but the SSP incorrectly indicated the start date was November 1, 2016. (D-4 and A-4)
- 5) On November 15, 2016, the Appellant called her case worker and stated that because she was sick and could not secure child care, she was unable to attend SPOKES on November 14, 2016. The Appellant and her case worker verbally agreed to change the Appellant's start date at SPOKES to November 21, 2016. (A-23)
- 6) On November 21, 2016, the Department received a doctor's excuse for the Appellant to excuse her from activity from November 14, 2016 through November 17, 2016. (A-7)
- 7) On December 16, 2016, the Appellant attended a Good Cause appointment with her case worker due to the Appellant not submitting verification that she completed 85 participation hours for November 2016. (A-23)
- 8) At the Good Cause appointment, the Appellant submitted participation timesheets for November 2016. The first timesheet was for November 1, 2016 through November 4, 2016, with 20 total hours completed at [REDACTED]. The second timesheet was for November 7, 2016 through November 19, 2016, with 51 total hours completed at [REDACTED]. The third timesheet was for November 21, 2016 through November 30, 2016, with 10 total hours completed at SPOKES. The total combined hours for all of the submitted timesheets was 81 hours. (D-4 and A-3)
- 9) The case worker determined the site supervisor's signature on the first and second [REDACTED] timesheets did not match and called to verify with the site supervisor that she did not sign the timesheet for November 7, 2016 through November 19, 2016. The case worker did not grant the Appellant Good Cause on suspicion of the forged signature. (A-3 and A-23)
- 10) On December 16, 2016, the Appellant's case worker requested approval to place a fourth sanction on the Appellant for failure to complete 85 participation hours for November 2016 and for submitting a timesheet with a forged signature. The sanction was approved to begin effective January 1, 2017. (D-1, A-8, and A-12)
- 11) The Appellant's case worker received a message from the site supervisor at [REDACTED] stating that the Appellant did complete participation hours up until November 19, 2016. (A-11)

## 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 §24.3, requires that a single Work-Eligible parent with a child under age 6 meet the work participation requirement by participating 85 hours per month or 20 hours per week. Excused absences of up to 16 hours per month, not to exceed a maximum of 80 hours in the 12 month period, may be counted as hours worked in that month. An excused absence includes illness or other good cause which prevented participation.

### DISCUSSION

The Department placed the Appellant on a fourth sanction for failure to meet the terms of the PRC by failing to attend an assigned activity. The Appellant requested a hearing because she felt she completed the required hours of her assigned activity and was not given credit for some of her participation hours.

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.

The Department’s representative, Robert Meade, testified that the Appellant did not meet the terms of the PRC. He stated the Appellant did not complete 85 participation hours for November 2016, and he added that the Appellant submitted a forged timesheet to make it appear as though she had completed the required participation hours. Mr. Meade stated the timesheet with the forged signature was for the timeframe of November 7, 2016 through November 19, 2016, and it had a total of 51 participation hours. Mr. Meade stated that once the Appellant’s case worker verified with the supervisor at [REDACTED] that the supervisor did not sign the timesheet, the case worker requested approval to apply a fourth sanction and terminate the Appellant’s WV WORKS benefits.

The Appellant’s representative stated the Department was incorrect in its decision to apply a fourth sanction and terminate the Appellant’s WV WORKS benefits. She stated the Appellant completed the required amount of participation hours. She added that the Appellant did not forge the signature on the timesheet in question. She argued that in addition to the 81 total participation hours completed by the Appellant, the Department failed to credit the Appellant 16 additional hours for two (2) holidays in the month of November.

The Department’s position was that the Appellant did not complete the 51 participation hours listed on one of the timesheets submitted for November 2016, because it was verified that the supervisor did not sign the timesheet. Evidence submitted verified that the supervisor at [REDACTED] sent the Appellant’s case worker a message to notify the worker that she made a mistake in her previous statement, and the Appellant did in fact complete participation hours at [REDACTED] until November 19, 2016. Additional evidence was provided to show that the supervisor allowed her assistant to sign the Appellant’s timesheet in her absence. Although the Department did not have knowledge prior to applying the sanction

that there was a misunderstanding and the supervisor allowed her assistant to sign the timesheet, the Department was aware that the Appellant completed hours at [REDACTED] until November 19, 2016. Also, evidence does not support the Department's position that the Appellant forged documentation. Since the Appellant and her case worker had a verbal agreement that the Appellant's activity location would not change until November 21, 2016, make-up hours completed at [REDACTED] should have been counted towards the Appellant's November participation hours. Because the Appellant completed 81 participation hours and should have been credited an additional 16 hours for holiday time, the Appellant met her required 85 hours of participation for the month of November 2016.

### **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, the case worker may impose a sanction if the client fails to adhere to responsibilities and assignments agreed upon on the PRC/SSP.
- 2) The Department was notified that the Appellant completed participation hours on the timesheet in question.
- 3) Because the Appellant met her monthly requirement of at least 85 participation hours, the Department was incorrect to impose a sanction on January 1, 2017.

### **DECISION**

It is the decision of the State Hearing Officer to **reverse** the Department's decision to impose a fourth sanction on the Appellant's case effective January 1, 2017.

**ENTERED this 9<sup>th</sup> day of May 2017.**

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**Natasha Jemerison  
State Hearing Officer**