



July 10, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1527

Dear Mr. [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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Stacey Fletcher, Department Representative

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

[REDACTED],

Appellant,

v.

Action Number: 17-BOR-1527

**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 [REDACTED]. 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 April 18, 2017, on an appeal filed March 23, 2017.

The matter before the Hearing Officer arises from the Respondent's February 6, 2017 decision to terminate the Appellant's WV WORKS benefits.

At the hearing, the Respondent appeared by Stacey Fletcher. Appearing as a witness for the Respondent was [REDACTED]. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-4* Personal Responsibility Contract (PRC)/Self-Sufficiency Plan (SSP) signed by the Appellant on January 11, 2017
- D-5 Case summary
- D-6 Notice of decision, dated February 6, 2017
- D-7 Participant Time Sheet regarding the Appellant, for activity in the month of February 2017
- D-8 Weekly/Monthly Participant Progress Report regarding the Appellant, for activity in the month of February 2017
- D-9 West Virginia Income Maintenance Manual (WVIMM), Chapter 24.3

*Exhibits D-1, D-2 and D-3 were duplicates of the documents in the initial fair hearing request and referral, and were not entered.

Appellant's Exhibits:

- A-1 Statement of medical care/leave of absence, signed March 30, 2017, by [REDACTED]
- A-2 Emergency Documentation Physician Note, signed February 5, 2017, by [REDACTED], M.D.
- A-3 Emergency Documentation Physician Note, signed February 6, 2017, by [REDACTED], D.O.; Patient Education documents, dated February 6, 2017

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) As a condition of eligibility for WV WORKS, the Appellant was expected to participate in an activity.
- 3) The Appellant signed a Personal Responsibility Contract (PRC)/Self-Sufficiency Plan (SSP) on January 11, 2017, agreeing to “attend GED class,” or Adult Basic Education (“ABE”), for a total of 85 hours per month. (Exhibit D-4)
- 4) The Respondent issued a February 6, 2017 notice advising the Appellant that his WV WORKS case would be closed for six months due to a second sanction. The reason given for the sanction was non-compliance with the PRC by failing to attend an assigned activity. The notice provided a good cause interview appointment for the Appellant on February 15, 2017.
- 5) The Appellant did not attend his good cause appointment.
- 6) The Appellant participated in ABE classes for just over 8 hours in February 2017. (Exhibit D-7)

APPLICABLE POLICY

The West Virginia Income Maintenance Manual (WVIMM), at §13.9, reads, “When a member of the AG [assistance group] or non-recipient Work-Eligible Individual does not comply with requirements found on his PRC [Personal Responsibility Contract] or SSP [Self-Sufficiency Plan], a sanction must be imposed unless the Worker determines that good cause exists.”

At §24.3.B, policy addresses excused and unexcused absences for WV WORKS activities. At §24.3.B.2, this policy limits the amount of excused absences that may be counted as participation hours to 16 hours per month.

At §13.9.A, policy establishes the duration for WV WORKS sanctions, and notes that a second-offense sanction results in “ineligibility for cash assistance for 6 months.”

DISCUSSION

The Appellant requested a hearing to contest the decision of the Respondent to terminate his WV WORKS benefits due to a sanction for PRC/SSP non-compliance without good cause. The

Respondent must prove, by a preponderance of the evidence, that the Appellant did not comply with his PRC/SSP, and that the Appellant did not have good cause for doing so.

The Appellant signed a PRC/SSP agreeing to participate in ABE classes for 85 hours per month. The Appellant was unable to meet this requirement during January 2017, the first month he was expected to participate, but was given good cause for medical reasons. Early in February 2017, the Appellant's WV WORKS caseworker determined through communication with the Appellant's ABE instructor that the Appellant was not attending class as required. The Respondent issued the February 6, 2017 sanction notice on this basis. This notice set a date for a good cause interview between the Appellant and his caseworker, which would have allowed the caseworker to determine if good cause for the PRC non-compliance was established and prevent the imposition of the sanction. The Appellant did not appear for the good cause interview.

The Appellant did not establish good cause during the hearing. The Appellant continued to have medical issues during the month of February 2017 which would have justified missing some time from class. The medical documentation from the Appellant's February 4, 2017 visit to his physician noted under limitations that the Appellant should not attend school for one day, and set another day for a follow-up visit (Exhibit A-2, page 3 of 5). The documentation from the Appellant's February 6, 2017 visit with his physician set one more follow-up visit but did not list any restrictions on attending school (Exhibit A-3). Policy limits the allowable excused absences that can be counted toward participation at 16 hours per month. By the end of February 2017, the Appellant had just over 24 hours of countable participation, but needed 85 hours.

Based on the testimony and evidence, the Respondent clearly established that the Appellant did not comply with his PRC/SSP requirements in February 2017, and did not establish good cause for the non-compliance. The Respondent was correct to impose a second sanction against the Appellant's WV WORKS case on this basis, resulting in case closure for six months.

CONCLUSIONS OF LAW

- 1) Because the Appellant did not comply with the requirements of his PRC/SSP or establish good cause for doing so, the Respondent must sanction his WV WORKS case.
- 2) Because a second-offense WV WORKS sanction results in cash assistance ineligibility for six months, the Respondent must terminate the Appellant's WV WORKS benefits.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's termination of the Appellant's WV WORKS benefits.

ENTERED this ____ Day of July 2017.

Todd Thornton
State Hearing Officer