



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Jim Justice  
Governor

Bill J. Crouch  
Cabinet Secretary

October 18, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 17-BOR-2506

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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

cc: Teresa Harper, WVDHHR

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

██████████,

**Appellant,**

v.

**Action Number: 17-BOR-2506**

**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 4, 2017, on an appeal filed September 15, 2017.

The matter before the Hearing Officer arises from the August 31, 2017 decision by the Respondent to terminate benefits under the WV WORKS Program. At the hearing, the Respondent appeared by Teresa Harper, Family Support Specialist, and Casey Hicks, Family Support Specialist. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**Respondent's Exhibits:**

- D-1 Hearing Scheduling Order dated September 20, 2017
- D-2 Individual Comments
- D-3 Notices sent to Appellant on September 18, 2017, September 8, 2017 and August 31, 2017
- D-4 WV WORKS Personal Responsibility Contract (PRC) signed on August 8, 2017 and Self-Sufficiency Plan
- D-5 Letter from ██████████, D.O., dated August 15, 2017 and received by Respondent on August 25, 2017
- D-6 Orientation to WV WORKS signed on April 18, 2017
- D-7 Electronic Mail Transmission dated October 10, 2017 and Disability/Incapacity Medical Assessment

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 part of her Self-Sufficiency Plan, the Appellant was assigned to complete a community service activity at a thrift store for 119 hours per month beginning August 8, 2017 (D-4).
- 3) The Appellant failed to appear for the work assignment and told the case worker that she was having medical problems with diabetes. The Respondent requested that the Appellant submit a physician's statement concerning her inability to work.
- 4) The Appellant submitted a physician's statement (D-5) on August 25, 2017, which indicated that she would be unable to work from August 15, 2017 to August 29, 2017.
- 5) The Appellant was given a disability/incapacity verification statement for her physician to complete since her inability to work had only been verified through August 29, 2017.
- 6) The doctor's statement was not returned, and the Respondent imposed a first sanction on the Appellant's WV WORKS benefits effective October 2017 (see Exhibit D-3).
- 7) The Appellant failed to attend a good cause appointment the Respondent scheduled for her on September 8, 2017 to address the sanction.
- 8) The Appellant testified that she has medical issues with diabetes, anxiety and depression, and was unable to get her physician to fill out the documentation immediately. She indicated that her driver's license was also suspended for a time. She stated that she has since obtained a physician's statement.
- 9) The Respondent agreed to review the physician's statement and the hearing record remained open until October 13, 2017. The Respondent indicated on October 10, 2017 that the statement was insufficient to determine inability to work. While the statement reveals that the Appellant's disability/incapacity was expected to last one to two months, it indicates that the Appellant could participate in a work or educational activity at least five hours per week with accommodations. Therefore, the Respondent could not lift the sanction based on the new documentation.

## **APPLICABLE POLICY**

West Virginia Income Maintenance Manual Chapter 13.9 states that when a member of the WV WORKS Assistance Group or non-recipient Work-Eligible Individual does not comply with requirements found on his PRC or SSP, a sanction must be imposed unless the worker determines that good cause exists.

West Virginia Income Maintenance Manual Chapter 13.10.D states that good cause for failing to participate in a work activity can be granted when a WV WORKS recipient is experiencing a

physical or mental health condition or suffering from a temporary debilitating injury for which a reasonable accommodation cannot be made. The individual's condition must be reevaluated within the time limits specified by his medical practitioner or at least quarterly. Form DFA-DIMA-1 must be requested to be completed by the medical provider. For any period of disability or incapacity that is expected to last longer than six months, the case must be submitted to MRT for evaluation. MRT must also approve all individuals claiming permanent and total disability.

### **DISCUSSION**

Policy states that when a WV WORKS recipient fails to comply with PRC/SSP requirements, a sanction can be applied to the case. Good cause for failing to participate in a work activity can be granted when a WV WORKS recipient is experiencing a physical or mental health condition or suffering from a temporary debilitating injury for which a reasonable accommodation cannot be made. While the Appellant provided subsequent verification that her disability/incapacity is expected to last one to two months, her physician indicated that she could participate in a work or educational activity with accommodations. Therefore, the Respondent acted correctly in applying a sanction to her WV WORKS benefits.

### **CONCLUSIONS OF LAW**

Based on information provided during the hearing, the Respondent acted correctly in applying a sanction and terminating the Appellant's WV WORKS benefits.

### **DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Respondent's action to terminate WV WORKS benefits effective October 2017.

**ENTERED this 18th Day of October 2017.**

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**Pamela L. Hinzman  
State Hearing Officer**

