



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

January 13, 2017

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2864

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Rose Spears, Department Representative

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2864

**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 January 10, 2017, on an appeal filed October 18, 2016.

The matter before the Hearing Officer arises from the Respondent's October 12, 2016 decision to terminate the Appellant's WV WORKS benefits.

At the hearing, the Respondent appeared by Rose Spears. The Appellant was represented by ██████████, Esq. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Case summary
- D-2 Screen print of case recordings regarding the Appellant's case, from the Respondent's data system
- D-3 WV WORKS 4th and Subsequent Sanction Summary form
- D-4 Additional screen prints of case recordings regarding the Appellant's case, from the Respondent's data system

- D-5 Copies of identification documents from the Appellant's case record; additional screen print of case recordings regarding the Appellant's case, from the Respondent's data system
- D-6 Printed page from the West Virginia Department of Motor Vehicles website
- D-7 Notice of decision, dated October 12, 2016

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 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 has children under the age of six years.
- 4) The Respondent provided the Appellant with a referral to a local child care resource and referral agency ("Link") to address her child care needs.
- 5) The Respondent generated a letter on October 11, 2016 (Exhibit D-2) notifying the Appellant on October 12, 2016 (Exhibit D-7) of a sanction terminating her WV WORKS benefits for "failing to attend an assigned activity."
- 6) This notice set a good cause interview appointment for October 18, 2016. (Exhibit D-7)
- 7) The Appellant had relied on her mother for child care so she could participate in the activity required for WV WORKS.
- 8) The Appellant's mother had unexpected severe medical problems which caused the Appellant to be without child care.
- 9) The Appellant was unable to use the referral to Link because Link did not accept the form of identification the Appellant provided.
- 10) The Appellant is unable to obtain proper identification until identity theft issues are resolved in [REDACTED] her prior state of residence.

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 §13.10, policy addresses the sanction notification as follows (emphasis added):

Failure or refusal to comply, without good cause, results in imposition of a sanction. When the Worker discovers the failure or refusal, a notice of adverse action must be issued. When a letter is mailed scheduling the good cause interview, the Worker must allow no less than 7 calendar days. This period begins **the day following the date the letter is requested in RAPIDS**, or the day following the date a manual letter is sent. If the letter is hand delivered, case comments must be made indicating the date the letter was given to the client. If the appointment is scheduled for a date prior to the 7 calendar days, the participant and the Worker must agree on the appointment date.

At §13.10.C, policy provides a good cause component for not complying with participation requirements when “a single parent can prove that appropriate child care is unavailable for his child, under age (six).”

DISCUSSION

The Appellant requested a hearing to contest the decision of the Respondent to terminate her WV WORKS benefits due to a sanction for PRC or SSP non-compliance without good cause. The Respondent must prove, by a preponderance of the evidence, that the Appellant did not comply with her PRC or SSP, and that the Appellant did not have good cause for doing so.

The Respondent did not present a copy of the Appellant’s PRC or SSP as evidence. Testimony alluded to a requirement to attend training classes, but no copy of the signed document was presented. Additionally, the notice advising the Appellant of her good cause appointment did not precede the appointment itself by the minimum number of days required by policy. The Appellant did not dispute the non-compliance itself and testimony was not limited to the proposed good cause at the time of the good cause appointment.

The Respondent provides referrals to help WV WORKS recipients address needs or barriers to employment or participation in WV WORKS activities. The Respondent provided the Appellant with a referral to help with her child care needs. The Appellant instead obtained child care from her mother until her mother’s medical problems made that impossible. When the Appellant tried to use the referral after her mother could no longer provide child care for her, the child care resource and referral agency did not accept the form of identification she presented.

The Appellant's mother had medical problems which could not have been foreseen. The Appellant could not have anticipated the resource and referral agency's identification requirements. Presumably the Respondent required some form of identification during the Appellant's WV WORKS application and orientation, but it is unlikely they would be aware of different identification requirements for the resource and referral agency (or it was aware and provided it without addressing the problem at the time). The Appellant has to resolve identity theft issues in another state before she can obtain proper identification, and she must have proper identification before she can obtain the child care she needs to participate in her WV WORKS activity. The Appellant has clearly established good cause for non-compliance with her WV WORKS requirements, and the Respondent must not apply a WV WORKS sanction.

CONCLUSIONS OF LAW

- 1) Because the Appellant has children under the age of six and no child care available to her, she has established good cause for not complying with her WV WORKS activity.
- 2) Because the Appellant has established good cause, the Respondent must not apply a sanction terminating the Appellant's WV WORKS benefits.

DECISION

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

ENTERED this ____ Day of January 2017.

Todd Thornton
State Hearing Officer