



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

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

March 23, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-3219

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: Lindsay Greene, Department Representative

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

██████████,

Appellant,

v.

Action Number: 16-BOR-3219

**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 24, 2017, on an appeal filed December 23, 2016.

The matter before the Hearing Officer arises from the Respondent's December 19, 2016 decision to terminate the Appellant's WV WORKS benefits.

At the hearing, the Respondent appeared by Lindsay Greene. Appearing as a witness for the Respondent was ██████████. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Screen prints of the client summary and individual comments regarding the Appellant's case, from the Respondent's data system
- D-2 Personal Responsibility Contract (PRC)/Self-Sufficiency Plan (SSP) signed by the Appellant on October 27, 2016
- D-3 Participant time sheets for the Appellant from October, November and December 2016, with accompanying documentation for excused absences
- D-4 Notice of WV WORKS sanction and termination, dated December 19, 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 signed a Personal Responsibility Contract (PRC)/Self-Sufficiency Plan (SSP) on October 27, 2016, agreeing to participate in Strategic Planning in Occupational Knowledge for Employment and Success (“SPOKES”) for a total of 128 hours per month, to be verified by providing time sheets on a monthly basis. (Exhibit D-2)
- 4) The Appellant participated in SPOKES for 77 hours in November 2016 (Exhibit D-3), but was not sanctioned for failure to attend this activity because she established good cause by providing sufficient doctor’s excuses for her absences. (Exhibit D-1, Individual Comments, entry dated December 5, 2016).
- 5) As of December 16, 2016, the Appellant had participated in SPOKES for 38.5 hours in December 2016. (Exhibit D-3)
- 6) The Respondent notified the Appellant on December 19, 2016, that her WV WORKS case was being sanctioned for not complying with the terms of her PRC by failing to attend her assigned activity, and that her “WV WORKS benefits will stop during the sanction period.” (Exhibit D-4)

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 first offense sanction results in “ineligibility for cash assistance for 1 month.”

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/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/SSP, and that the Appellant did not have good cause for doing so.

The Appellant signed a PRC/SSP agreeing to participate in SPOKES for 128 hours per month. The Appellant did not meet this requirement in November 2016 or December 2016. In November 2016, the Appellant was granted good cause for absences excused for medical reasons. In December 2016, the Respondent determined as of December 16, 2016 that the Appellant would not be able to complete the 128 hours required for that month and issued a December 19, 2016 notice of sanction and WV WORKS termination.

The Appellant testified that although she did not complete the required 128 hours in December 2016, she could have. The testimony and evidence does not indicate this is likely. As of December 16, 2016, the Appellant had attended her required activity 38.5 hours, and there were nine scheduled days of SPOKES remaining in the month for her to make up 89.5 participation hours.

The Appellant claimed, but did not present evidence of excused absences in December. Even if the Appellant had verified these excuses, policy caps the allowable excused absences that can be counted toward participation at 16 hours per month, leaving 73.5 hours for the Appellant to make up, or over eight hours on each remaining scheduled SPOKES day for the month. The Appellant was only scheduled to attend SPOKES for six hours daily, but testified that she discovered she could attend more than six hours per day. She attended SPOKES for seven hours on December 20, and then failed to attend her activity for the remainder of the month. According to her testimony, the Appellant abandoned her activity because of the pending sanction.

Based on the testimony and evidence, the Respondent clearly established that the Appellant could not comply with her PRC/SSP requirements in December 2016. The Respondent was correct to sanction her WV WORKS on this basis, resulting in case closure.

CONCLUSIONS OF LAW

- 1) Because the Appellant did not comply with the requirements of her PRC/SSP or establish good cause for doing so, the Respondent must sanction her WV WORKS case.
- 2) Because a first offense WV WORKS sanction results in cash assistance ineligibility, 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 March 2017.

**Todd Thornton
State Hearing Officer**