



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 558-2278 Fax: (304) 558-1992**

**Jolynn Marra
Interim Inspector General**

March 18, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 19-BOR-2890

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Angela D. Signore
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: [REDACTED], Esquire

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

[REDACTED],

Appellant,

v.

ACTION NO.: 19-BOR-2890

**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' (WV DHHR) Common Chapters Manual. This fair hearing was convened on February 13, 2020, on an appeal filed December 23, 2019.

The matter before the Hearing Officer arises from the December 19, 2019 determination by the Respondent to terminate eligibility for Homeless Program benefits for a period of twelve (12) months.

At the hearing, the Respondent appeared by Counsel, [REDACTED], Esquire. Appearing as witnesses for the Department were [REDACTED], Director, [REDACTED], Attendant, [REDACTED], Case Manager, [REDACTED], Assistant Director, [REDACTED], and [REDACTED], Chief Program Officer.

The Appellant was present and was represented by [REDACTED]. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 WV DHHR Equal Employment Opportunity (EEO) Discrimination Complaint Form, Appeal request, dated December 20, 2019, and Electronic mail (E-mail) correspondence between [REDACTED] and [REDACTED], dated December 18, 2019 and December 20, 2019

D-2 [REDACTED] daily log, dated December 17, 2019

D-3 [REDACTED] Sanction Procedures form regarding [REDACTED], signed by [REDACTED] and [REDACTED], and [REDACTED]

- Client Notification of Sanction for resident [REDACTED], signed by [REDACTED] and [REDACTED], dated December 20, 2019
- D-4 [REDACTED] Rules and Guidelines, and WV DHHR Social Services Manual, Homeless Services Policy, Chapter 8
- D-5 E-mail correspondence between [REDACTED], [REDACTED], and [REDACTED], dated December 21 – Dec 22, 2019; Statement of action taken, illegible signature, dated December 23, 2019; [REDACTED] Incident timeline regarding [REDACTED], signed by [REDACTED], and [REDACTED] Incident timeline regarding [REDACTED], signed by [REDACTED]
- D-6 WV DHHR Board of Review (BOR) hearing request packet and Scheduling Order
- D-7 WV DHHR Homeless Service Plan for [REDACTED] ([REDACTED]) and [REDACTED], dated July 30, 2019 through December 26, 2019
- D-8* Chart of other residents (names redacted) of [REDACTED], dated February 19, 2020.

Appellant's Exhibits:

None

* During the hearing counsel for the Department moved to submit redacted evidence post-hearing. The motion was granted without objection of the Appellant.

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant is a resident of [REDACTED] ([REDACTED]) and is a recipient of benefits through the Homeless Program since July 29, 2019. (Exhibit D-7)
- 2) [REDACTED] Rules require all medication (both prescription and over-the-counter) to be turned in at the time of intake and anytime during the residents stay. (Exhibits D-3 and D-4)
- 3) [REDACTED] Rules prohibits the possession or use of alcohol and/or drugs, on shelter property. (Exhibits D-3 and D-4)
- 4) On December 17, 2019, the Appellant was observed meeting with another resident in the restroom of [REDACTED] where she was found exchanging medication, a violation of [REDACTED] Rules. (Exhibits D-3 and D-4)
- 5) The Appellant was found in possession of a medication (Vistaril) for which she did not have a prescription, during the December 17, 2019 restroom incident, violating [REDACTED] Rules. (Exhibits D-3 and D-4)

- 6) On December 19, 2019, the Appellant was notified that a sanction was being imposed and she was evicted from [REDACTED] for a period of twelve (12) months, beginning December 18, 2019. (Exhibit D-3)
- 7) Prior to the December 18, 2019 sanction notice, the Appellant had not received a written or verbal violation notice pursuant to [REDACTED] Rules. (Exhibit D-7)
- 8) The Appellant does not contest her violation of [REDACTED] Rules and acknowledged she was aware the penalty in violating could result in being asked to leave the shelter immediately.
- 9) The Appellant alleges discrimination by [REDACTED] staff based on her race, color, disability, and sexual orientation. (Exhibits D-1 and D-5)
- 10) The Department disclosed inconsistent sanctions of other [REDACTED] residents who violated [REDACTED] Rules and Guidelines/Zero Tolerance Policy.
- 11) The Appellant's Homeless Program benefits have continued pending a hearing decision.

APPLICABLE POLICY

WV DHHR Social Services Manual Adult Welfare Policy, Homeless Services, Chapter 8, § 5.5 reads, in part:

A sanction is a negative action resulting in the temporary withholding of benefits because of client non-compliance with the service plan, violation of homeless policy, or fraud.

A client against whom negative action (sanction) has been imposed shall not be eligible for benefits until the sanction period has ended.

When the client fails to accept, or abide by, the shelter rules which results in eviction (not minor infractions); and/or, when the client receives or attempts to receive benefits fraudulently.

Sanctions Shall Be Imposed as Follows:

1. The first sanction period shall be one (1) month.
2. The second sanction period shall be six (6) months.
3. Any subsequent non-compliance shall be for twelve (12) months.

Note: If a client loses access to housing/shelter as a result of violent behavior, or if fraud is used to receive benefits, the sanction period shall be twelve (12) months.

[REDACTED] Shelter Rules and Guidelines:

2. **MEDICATIONS:** All medication (both prescription and over the counter) are to be turned in at the time of intake and anytime during the residents' stay. Residents dispense their own and their children's medication. Medications will be kept locked in the front office and may be taken during the following times:

7:30 – 8:30 am
12:30 – 1:00 pm
5:30 – 6:30 pm
9:00 – 10:00 pm

Shelter Rules and Guidelines Zero Tolerance Policy:

YOU WILL BE ASKED TO LEAVE THE SHELTER IMMEDIATELY ACTIONS SUCH AS: NONE INCLUSIVE & ZERO TOLERANCE RULES:

3. Possession or use of Alcohol and/or Drugs, Drug paraphernalia on shelter property (include alley). *I understand that while staying at Sojourner's I am consenting to random drug searches and sweeps.*

WV DHHR Social Services Manual Adult Welfare Policy, Homeless Services, Chapter 8, § 5.7 reads, in part:

In an emergency situation, the request for a policy exception may be made to and approved by the local supervisor and Adult Services Consultant or Program Manager verbally. Once verbal approval is granted, the request for policy exception and all supporting information must be submitted to the immediate supervisor in writing within two (2) working days. After the immediate supervisor has given written approval via e-mail, then the request must be forwarded to the appropriate regional staff. Once approval has been obtained by the appropriate regional staff, a hard copy of the approvals must be filed in the client's case record.

WV DHHR Social Services Manual Adult Welfare Policy, Chapter 8, § 5.8 reads, in part:

The Bureau for Children and Families (BCF) does not exclude, deny benefits to, or otherwise discriminate against any person on the ground of race, color, national origin, disability, age, sex, sexual orientation, religion or creed in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, whether carried out by BCF directly or through a contractor or any other entity with which BCF arranges to carry out its programs and activities.

WV DHHR Social Services Manual Adult Welfare Policy, Chapter 8, § 5.9.A reads, in part:

Grievance requests due to alleged discriminatory actions must be submitted to the Department of Health and Human Resources, Equal Employment Opportunity (EEO)/Civil Rights Officer, within 180 business days of the date the person filing the grievance becomes aware of the alleged discriminatory action. To file the grievance, the grievant must complete form IG-CR-3 and mail to West Virginia

Department of Health and Human Resources, Office of Human Resources Management, EEO/Civil Rights Officer, One Davis Square, Suite 400, Charleston, WV 25301. The grievant may also contact the WV DHHR, EEO/Civil Rights Officer, for more information.

WV DHHR: Office of Human Resource Management
Contact Person: EEO/Civil Rights Officer
Telephone number: (304) 558 6811
Fax: (304) 558-6051

DISCUSSION

The Homeless Services Program is designed to assist individuals and/or families who are without available shelter and sufficient resources at the time of application or referral to the Department. The intent of this program is to provide temporary assistance until the individual achieves independence or no longer meets the definition of homeless.

The Respondent bears the burden of proof the action taken against the Appellant was in accordance with policy. The Respondent had to prove by a preponderance of evidence that the Appellant's Homeless Program benefits were correctly sanctioned and acted in accordance with policy in its decision to terminate eligibility for Homeless Program benefits through [REDACTED] for a period of twelve (12) months. The Appellant's Homeless Program benefits have continued pending a hearing decision.

On December 17, 2019, a [REDACTED] employee found the Appellant to be in possession of four (4) Vistaril tablets, a prescription medication. The Department testified that the Appellant was afforded the opportunity to provide a prescription for the medication, but she did not do so. During the hearing, the Appellant admitted to the possession of Vistaril medication, for which she did not have a prescription.

[REDACTED] Rules are clear in that all medications are to be turned in at the time of intake and anytime during the resident's stay. The rules also establish a zero-tolerance policy for the possession and/or use of alcohol and/or drugs, or drug paraphernalia on shelter property. Individuals in violation of the zero-tolerance rule will be asked to leave the property immediately. It is noted that the Appellant was not asked to leave immediately but was permitted to stay at the shelter at the time of incident and has remained in the shelter pending a decision by the Board of Review.

Because the Appellant was found to have violated [REDACTED] Rules, in a letter dated December 19, 2019, the Appellant was notified that she was being placed in a twelve (12) month Homeless Program sanction, beginning December 18, 2019. The Department contends its decision to implement the twelve (12) month sanction of Homeless Program benefits as pursuant to Sections 33,443, and 33,600-33,630 of an out-dated Social Services Manual.

During the hearing the Appellant acknowledged she was aware of [REDACTED] policy regarding the storage and possession of prescription and over-the-counter medications and does not contest her violation of these rules. The Appellant did, however, question the Department as to why the

sanction was for one (1) year instead of one (1) month, as outlined in policy, but the Department failed to provide a response.

Pursuant to the West Virginia Department of Health and Human Resources, Social Services Policy Manual, Chapter 8 (updated December 2018), a sanction is imposed against a resident when the resident fails to accept, or abide by the shelter rules which results in eviction - the first sanction period shall be one (1) month, the second sanction period shall be six (6) months, and any subsequent non-compliance sanctions shall be for twelve (12) months. If a client loses access to housing/shelter as a result of violent behavior, or if fraud is used to receive benefits, the sanction period shall be twelve (12) months. However, the Appellant did not meet the standard for a twelve (12) month sanction because the sanction was not due to (1) a history of a previous written or verbal violations, (2) due to an act of violence, and/or (3) benefits are not thought to being received fraudulently.

The Appellant alleges that [REDACTED] sanctioned her not because of the policy violation, but as an act of discrimination. The Appellant contended her stay at [REDACTED] was marred with unfavorable treatment such by shelter staff and based the allegation of discrimination due to race, color, disability, and sexual orientation. Testimony provided by the Appellant Representative cited multiple violations of both the drug and weapon policy by other residential members of [REDACTED] that did not result in a similar twelve (12) month sanction.

When the Appellant questioned the Department's sanctioning process in reference to other residents of [REDACTED] who violated shelter policy, testimony provided by the Department established inconsistencies. [REDACTED] Guidelines Zero Tolerance Policy #4 lists "You will be asked to leave the shelter immediately for.... Possession of a weapon on Shelter property". However, when a resident was found in possession of a pocketknife, the Department testified that only a warning was given, and the weapon confiscated. Social Services Policy Manual, Section 5.7 provides the shelter discretion in applying sanctions in that that certain exceptions to policy can be requested and granted on an individual case by case basis and only in situations where client circumstances are sufficiently unusual to justify the exception. Further, the fact that other residents, who may or may not have received sanctions for a violation of [REDACTED] rules, does not negate the Appellant's own actions.

At the time of request for a fair hearing for the imposed twelve (12) month sanction, the Appellant also filed a grievance regarding her allegations of discrimination. Board of Review staff assisted the Appellant with the completion of the discrimination complaint on December 20, 2019. The paperwork was forwarded to West Virginia Department of Health and Human Resources, Office of Human Resources Management, EEO/Civil Rights Officer. The Status of the EEO investigation is unknown. Because the EEO has assumed jurisdiction of any allegations of discrimination, the only issue before the Board of Review is whether the Appellant violated drug policy and was appropriately sanctioned for that violation.

CONCLUSIONS OF LAW

- 1) Because the Appellant failed to abide by shelter rules, she is subject to sanction.
- 2) Because this is the Appellant's first violation of rules due to non-violent action, she is subject to a one (1) month sanction.
- 3) The Department erred in its decision to implement a sanction of Homeless Program benefits for a twelve (12) month period.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Department's decision to terminate the Appellant's eligibility for Homeless Program benefits through [REDACTED]. However, the Department's decision to apply a twelve (12) month sanction is **REVERSED**. The appropriate sanction period of one (1) month shall be applied in accordance with policy.

ENTERED this ____ day of March 2020.

Angela D. Signore
State Hearing Officer