



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
PO Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

Esta es la decision de su Audiencia Imparcial. La decision del Departamento
ha sido confirmada/invertido/remitido. Si usted tiene preguntas,
por favor llame a Phillip Owens, 304-267-0100, ext. 71054

August 30, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR, ACTION NO.: 16-BOR-2347

Dear [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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Pam Mills, WV DHHR

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

████████████████████,

Appellant,

v.

Action Number: 16-BOR-2347

**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 August 25, 2016, on an appeal filed July 25, 2016.

The matter before the Hearing Officer arises from the July 15, 2016 decision by the Respondent to apply a second sanction to the Appellant's WV WORKS program benefits.

At the hearing, the Respondent appeared by Pam Mills, Family Support Supervisor. The Appellant appeared *pro se*. The witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Personal Responsibility Contract (PRC) Self-Sufficiency Plan (SSP), signed and dated June 15, 2016
- D-3a Screen print of Individual Comments from Appellant's eRAPIDS case record from May 25, 2016 through August 9, 2016
- D-3b Screen print of Case Comments from Appellant's eRAPIDS case record from May 24, 2016 through July 25, 2016
- D-4 Emailed time reports from SPOKES program for July 2016
- D-5a June 2016 Participant Time Sheet
- D-5b July 2016 Participant Time Sheet
- D-6a June 2016 submitted doctor excuses
- D-6b July 2016 submitted doctor excuses
- D-7 West Virginia Income Maintenance Manual §13.9 (excerpt)

Appellant's Exhibits:

- A-1 [REDACTED] Patient Plan for 7/11/16
- A-2 Statement from Dr. [REDACTED], [REDACTED], dated August 17, 2016
- A-3 Medical Review Team (MRT) Physician's Summary form signed by Dr. [REDACTED], undated

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 is a participant in the WV WORKS (WORKS) program.
- 2) On June 15, 2016, the Appellant signed a Personal Responsibility Contract (PRC) Self-Sufficiency Plan (SSP) agreeing, among other things, to attend Strategic Planning in Occupational Knowledge for Employment Services (SPOKES) classes 85 hours/month or 20 hours/week as her program activity. (Exhibit D-2)
- 3) The SSP also required the Appellant to return her time sheets by the 5th day of each month. (Exhibit D-2)
- 4) In signing the SSP, the Appellant agreed to cooperate and participate in all assignments and activities listed in her SSP, and acknowledged that failure to do so would result in being penalized. (Exhibit D-2)
- 5) The Appellant failed to return her July timesheet. The SPOKES site supervisor was contacted by the WORKS caseworker and sent the Appellant's time records for July showing recorded attendance days for July 5, 2016 (1 hour, 18 minutes); July 11, 2016 (3 hour, 11 minutes); and, July 13, 2016 (2 hours, 20 minutes). (Exhibit D-4)
- 6) The Appellant returned doctor excuses for appointments for July 5, 2016 at 3:30 pm, July 6, 2016 at 10:30 am, and July 11, 2016. (Exhibit 6b)
- 7) On July 15, 2016, the Department sent the Appellant notice that a second sanction was being applied to her WORKS benefits, with a good cause appointment scheduled for July 25, 2016. The Appellant attended the good cause appointment; however, good cause was not found. (Exhibits D-3a and D-3b)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) §1.25.U explains that the Self Sufficiency Plan (SSP), form DFA-SSP-1, is a negotiated contract between each of the adult or emancipated minor members of the WV WORKS Assistance Group (AG), or non-recipient Work-Eligible Individual(s), and the Worker, as the representative of the Department. The SSP is specific to each participant. It lists the goals, as well as the tasks necessary to accomplish the goals, including specific appointments, assignments and activities for the adult/emancipated minor. In addition, the SSP identifies the circumstances which impede attainment of the established goals and specifies the services needed to overcome the impediments. The services listed on the form may be Support Service payments or any other type of service provided to the client or to which he has been referred.

WV IMM §13.10 sets forth reasons for granting good cause due to life events and/or problems and reads, “The Worker must determine whether or not the client is meeting the requirements, attempting to comply to the best of his ability, understands the requirements, and the sanction process. The Worker has considerable discretion in imposing a sanction.”

WV IMM §13.9 mandates that when a member of the AG 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. Once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed. The amount of the sanction is a fixed amount and is determined as follows:

- 1st Offense = Ineligibility for cash assistance for 1 month;
- 2nd Offense = Ineligibility for cash assistance for 6 months;
- 3rd and All Subsequent Offences = Ineligibility for cash assistance for 12 months.

To be considered for future benefits, the individual will be required to re-apply for WV WORKS benefits to again receive them.

DISCUSSION

On June 15, 2016, the Appellant entered into a Self-Sufficiency Plan (SSP) with her caseworker wherein she contracted to participate in all the assignments/activities listed in the SSP. Among the listed activities in her SSP was SPOKES class attendance 20 hours a week/85 hours a month, and to submit timesheets by the 5th day of each month. On July 15, 2016, the Appellant was sent notification of a second sanction being applied to her benefits case with a good cause appointment scheduled for July 25, 2016. The Appellant attended her good cause appointment; however, good cause was not found and the second sanction was applied. It is noted that the Appellant had a first sanction applied in April 2016, which closed her benefits. The Appellant did not appeal the first sanction at the time it was imposed, and mentioned the “unfairness” of the first sanction only as an aside at this hearing. The time for appealing the first sanction expired.

Regarding the second sanction, the Appellant asserted that she was unable to fulfill her 20 hours a week or 85 hours a month SPOKES activity due to her health issues, which she maintains her caseworker was aware and pointed to the SSP under “Challenges/Barriers” which lists “Health”. (See Exhibit D-2) The Department’s representative explained that under the health issue notation it indicates that the Appellant should be referred to other health services to overcome this challenge/barrier. The Appellant did admit she signed the SSP agreeing to participate in SPOKES as indicated even though she asserted she suffered from various health issues. The Appellant presented Exhibit A-2, a signed statement dated August 17, 2016 from Dr. [REDACTED] stating that the Appellant “is able to participate in work/work training 10 hours a week. This restriction is for one year.” The Appellant testified that she did not obtain this statement earlier because she was unaware that it was required. However, in a previous statement from the same physician dated July 11, 2016, which she submitted as an excuse for missing SPOKES activity hours for the same date, he states to “Please excuse [REDACTED] [Appellant] for 1 day(s). She may return to work on 07/12/2016. Activity is restricted as follows: none.” [Emphasis added] (See Exhibit D-6b)

The Appellant also maintained that because of all her health issues, she is unable to sit for long periods of time, thus the reason for her not meeting her activity participation hours. However, the evidence showed she did participate in SPOKES in the first few weeks in June for several hours at a time, exceeding 20 hours a week, with a doctor’s visit at 3:30 on June 8, 11:30 on June 21 with an Emergency Room visit the same day at 2:35 p.m. and a dental referral for her son dated June 22, 2016. Additionally, her doctor did not put her on any restricted activity until August 17, 2016, one week from the date of this hearing, although just the month before he did not restrict any of her activities.

The Appellant states that she has been long-suffering from health issues, which her caseworker was aware of when signing the SSP, a negotiated contract between herself and the Department. Policy requires that a WORKS program participant fulfill the terms of the signed SSP or be penalized. Good cause was not found by the caseworker, who has broad discretion in making this determination. The Appellant admitted she did not fulfill her agreed upon work activity hours for the month of July 2016. As the Appellant had a previous sanction in April 2016, the Department acted correctly in applying a second sanction to the Appellant’s WV WORKS benefits.

CONCLUSIONS OF LAW

- 1) The Appellant did not complete the work activity hours for the month of July 2016 as agreed to in her Self-Sufficiency Plan.
- 2) No good cause was found for the Appellant’s non-compliance.
- 3) This is the Appellant’s second sanction to her WV WORKS program benefits.
- 4) Per policy the second sanction shall be applied to the Appellant’s WORKS benefits for a period of 6 months.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Department's decision to apply a second sanction to the Appellant's WV WORKS program benefits.

ENTERED this 30th day of August 2016.

Lori Woodward, State Hearing Officer