



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

August 24, 2016



RE: [REDACTED] v WV DHHR
BOR ACTION NO.: 16-BOR-2374

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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Jacqueline Samson, Family Support Specialist

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

██████████,

Appellant,

v.

Action No: 16-BOR-2374

**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 convened on August 16, 2016, on an appeal filed July 26, 2016.

The matter before the Hearing Officer arises from the July 6, 2016 decision by the Respondent to terminate the Appellant's West Virginia Works benefits.

At the hearing, the Respondent appeared by Jacqueline Samson, Family Support Specialist. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Email Correspondence between case worker and Strategic Planning in Occupational Knowledge for Employment and Success (SPOKES) program instructor
- D-2 Self-Sufficiency Plan, dated May 24, 2016
- D-3 WV WORKS Personal Responsibility Contract and Self-Sufficiency Plan, dated June 28, 2016
- D-4 West Virginia Income Maintenance Manual Policy §§ 24.3 A and 24.3 B
- D-5 Participant Time Sheets, completed June 2016 and July 2016
- D-6 Home Visitation Report, signed April 7, 2016
- D-7 Notice of Decision, dated July 6, 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 and participant in the Department's WV WORKS cash assistance program.
- 2) The Department had the Appellant's physical and mailing address on record as [REDACTED]. The Appellant's correct address is [REDACTED].
- 3) On May 5, 2016, the Appellant signed a Self-Sufficiency Plan (SSP) which outlined her assignments and activities as a recipient of the WV WORKS program benefits. (Exhibit D-2)
- 4) On June 28, 2016, the Appellant signed an updated Personal Responsibility Contract (PRC) and SSP which outlined her responsibilities and assigned activities as a recipient of the WV WORKS program benefits. (Exhibit D-3)
- 5) The May 5, 2016 and June 28, 2016 SSP, a part of the PRC, required that the Appellant maintain 85 monthly hours of participation. (Exhibits D-2 and D-3)
- 6) On July 1, 2016, the Appellant submitted the June 2016 Participation Time Sheet. She completed 59 hours and 30 minutes of participation. (Exhibit D-5)
- 7) On June 14, 2016 and June 16, 2016, the Appellant completed Test Assessing Secondary Completion (TASC) Academy assignments but listed zero hours and minutes. (Exhibit D-5)
- 8) The Appellant had absences on June 3, 2016 and June 10, 2016, because her son was sick. She also had a doctor's excuse on June 30, 2016. (Exhibit D-5)
- 9) The Department issued the Appellant a letter notifying her that a sanction would be applied to her case effective August 1, 2016, for "FAILURE TO PARTICIPATE WITH WORK PROGRAMS". (Exhibit D-7)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) §1.25 instructs that failure, without good cause, to adhere to the responsibilities or any task listed on the PRC/SSP after signature results in a sanction being imposed.

WV IMM §13.9 (effective August 6, 2015), outlines the penalties for WV WORKS sanctions as follows:

1st Offense	Ineligibility for cash assistance for 1 month;
2nd Offense	Ineligibility for cash assistance for 3 months;
3rd Offense	Ineligibility for cash assistance for 6 months; and
4th and Subsequent Offense	Ineligibility for cash assistance for 12 months.

WV IMM §13.10, requires that all mandatory Work-Eligible individuals be placed in a relevant and current component for tracking and monitoring purposes on approval date. The participant MUST remain in that component until either the case is closed or the Case Manager and participant agree to change the component. WV IMM §13.10 also 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.” Failure or refusal to comply without good cause results in the imposition of a sanction.

WV IMM §24.3, requires that a single Work-Eligible parent with a child under age 6 meet the work participation requirement by participating 85 hours per month or 20 hours per week. Excused absences of up to 16 hours per month, not to exceed a maximum of 80 hours in the 12 month period, may be counted as hours worked in that month. An excused absence includes illness or other good cause which prevented participation.

DISCUSSION

The Department contends that because the Appellant failed to complete 85 participation hours in June 2016, as agreed upon in the PRC, a first-offense sanction should be imposed. The Appellant argued she had good cause for not completing all of the required hours, stating that she has attempted to comply with the best of her ability.

Policy explains that a worker may impose a sanction due to the failure to adhere to responsibilities and assignments agreed upon on the PRC/SSP. Policy also allows the worker considerable discretion in not only applying the sanction, but also in what is considered good cause.

During the hearing of this matter, the Department provided a copy of an exchange of e-mails concerning the Appellant. In the e-mails, the Appellant’s SPOKES instructor noted the Appellant’s lack of attention. However, she mentioned that if the Appellant can focus more, she

will have the ability to meet her goal of passing the TASC exam. The Department also praised the Appellant's efforts.

The Department's representative, Jacqueline Samson, testified that the Appellant did not complete 85 hours of participation in June 2016. She also stated that even if she added 16 hours for excused absences, the Appellant still would not have enough participation hours.

The Appellant testified that she tried hard to complete her hours. She stated she has Post-Traumatic Stress Disorder (PTSD) and anxiety, along with many family issues that occurred in June 2016. She stated that she tried to make up the missed hours by completing TASC Academy on her laptop at home. She acknowledged that she probably did not reach 85 hours, but she felt it was closer to 78 hours with the extra work she was doing at home.

In reviewing evidence submitted by the Department, it appears on June 14, 2016 and June 16, 2016, the Appellant participated in TASC Academy, but did not give herself credit for the hours completed. She admitted this was a mistake on her part. The Department was not able to address the unaccounted hours because the Appellant did not attend her scheduled good cause appointment. The Appellant testified she did not receive notice to attend the good cause appointment. Her explanation seems credible, as she did state at the beginning of the hearing that the Department does not have her correct address. Case records show the Appellant has an apartment number, but she stated that is incorrect. She also stated she did not receive the Department's exhibits in the mail.

Testimony from both the Department and Appellant demonstrate the Appellant has put forth considerable effort in abiding by the rules and regulations set forth in the PRC/SSP. However, because the Participation Time Sheet for June 2016 does not accurately reflect the true amount of hours completed of TASC Academy, it cannot be determined if she was able to reach 85 participation hours.

CONCLUSION OF LAW

Whereas the Appellant's Participation Time Sheet does not accurately reflect all completed participation hours for June 2016, a determination whether the Appellant adhered to the PRC/SSP requirements cannot be made.

DECISION

It is the decision of the State Hearing Officer to **REMAND** the matter back to the Department for further evaluation of the Appellant's completed activities for June 2016.

ENTERED this 24th day of August 2016.

**Natasha Jemerison
State Hearing Officer**