



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661**

**Bill J. Crouch
Cabinet Secretary**

**M. Katherine Lawson
Inspector General**

August 8, 2018



RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-1724

Dear Mr. [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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Agnes Watson, Family Support Specialist

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

[REDACTED],

Appellant,

v.

Action Number: 18-BOR-1724

**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 July 17, 2018, on an appeal filed May 17, 2018.

The matter before the Hearing Officer arises from the May 4, 2018 decision by the Respondent to discontinue the Appellant's receipt of WV WORKS cash assistance due to the imposition of a penalty or sanction.

At the hearing, the Respondent appeared by Agnes Watson, Family Support Specialist. Appearing as a witness for the Department was Kelly Marcum, Family Support Supervisor. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was his wife [REDACTED]. The participants were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Form DFA-PRC-1, WV WORKS Personal Responsibility Contract, signed by Appellant on April 2, 2018
- D-2 DFA-TS-12, WV WORKS Participant Time Sheet for April 2018 attendance at EXCEL Job Development Class, with attached absence excuses
- D-3 DFA-TS-12, WV WORKS Participant Time Sheet for April 2018 attendance at drug addiction recovery program
- D-4 Form DFA-PRC-1, WV WORKS Personal Responsibility Contract update, signed by Appellant's wife on April 2, 2018
- D-5 Appointment notifications and work absence excuses from [REDACTED], dated April 9, 2018

- D-6 DFA-TS-12, WV WORKS Participant Time Sheets for April 30, 2018 and May 2018
- D-7 DFA-TS-12, WV WORKS Participant Time Sheets for Appellant's wife, for April 30, 2018 and May 2018
- D-8 DFA-WVW-70, WV WORKS Referral for Training / Services, dated April 2, 2018, with attached documentation related to Appellant's participation in EXCEL class
- D-9 E-mail exchange among Appellant, WV WORKS worker and representative from [REDACTED], dated May 4 to June 1, 2018
- D-10 Form DFA-RR-1, Rights and Responsibilities, signed by Appellant and wife on April 2, 2018
- D-11 Case recordings from Appellant's work program case record, from February 26 to May 10, 2018

Appellant's Exhibits:

- A-1 E-mail exchange between Appellant and representative from [REDACTED], dated May 18, 2018

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence during 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 cash assistance benefits. One requirement of the WV WORKS program is participation in a work activity.
- 2) The Appellant and his wife obtained their monthly work activity hours by attending college. They attended on-line courses through [REDACTED].
- 3) In early 2018, [REDACTED] online business school merged with the [REDACTED], hereinafter [REDACTED]. The school formally changed to [REDACTED] on April 30, 2018. From April 1 to April 29, the school closed in order to make the necessary administrative changes associated with this merger.
- 4) The Appellant and his wife were required to participate in a WV WORKS work activity for April 2018, even though his on-line college was closed for that month. On Monday, April 2, 2018, the Appellant and his worker from the WV WORKS unit of the WV DHHR, [REDACTED] County office, signed a Personal Responsibility Contract (PRC) update (Exhibit D-1). On this update, the Appellant agreed to perform 150 work activity hours that month.
- 5) The Appellant obtained a total of 70 hours of work activities in April 2018. Part of these hours were earned through a job development class known as EXCEL, and others were earned through the Appellant's participation in a drug addiction treatment program operated by an addiction treatment clinic.

- 6) Because the Appellant did not obtain the required number of work activity hours for April 2018, his worker from the WV WORKS unit instigated a penalty or sanction against his receipt of WV WORKS cash assistance. He was scheduled for a good cause appointment, an opportunity for him to explain why he did not obtain his required number of work hours. His good cause appointment was scheduled for May 3, 2018 (Exhibit D-11).
- 7) The Appellant did not attend his May 3 good cause appointment (Exhibit D-11). The Department imposed a sanction against his receipt of WV WORKS cash assistance, thus discontinuing his receipt of WV WORKS from June through November 2018.
- 8) The Appellant requested a fair hearing in order to protest the imposition of a sanction upon his receipt of WV WORKS.

APPLICABLE POLICY

The WV Income Maintenance Manual (WV IMM) §14.8 reads as follows in part:

When a member of the [WV WORKS assistance group or] AG or non-recipient Work-Eligible Individual does not comply with requirements found on his [or her] Personal Responsibility Contract (PRC), a sanction must be imposed unless the Case Manager determines that good cause exists.

WV IMM §14.8.1 reads as follows in part:

Sanctions are applied in the form of termination of WV WORKS benefits. The duration of the sanction period is determined as follows:

First OffenseIneligibility for cash benefits for one month;
Second OffenseIneligibility for benefits for six months;
Third and All
Subsequent OffensesIneligibility for cash benefits for twelve months.

WV IMM §14.8.4 reads as follows in part:

A case staffing is required before all sanctions start. After a sanction has been imposed, the Worker must send a pending closure notice (DFA-WVW-5), which includes an appointment for a case staffing. The case staffing notice may be sent any time after notification that the sanction has been imposed, but before start of the sanction. It is recommended that the case staffing occur as soon as possible after the notification to try to avoid the sanction . . . The Worker must document in comments the dates the case staffing was scheduled and also document the outcome of a completed case staffing on a DFA-WVW-6 and in comments . . . During the case staffing, the case Manager must discuss with the participant the reason(s) for the sanction. The Case Manager will explore with the participant why he [or she] has not complied with the PRC or SSP or otherwise participated and cooperated . . . the Case Manager will explore any support services, other

Department services or community resources that are available to the client to address any challenges to participation.

WV IMM §18.7.1 reads as follows in part:

The Case Manager has the discretion to tailor the work requirements to the needs and goals of each family. Therefore, there are no mandatory procedures or processes that must be applied to each family. Instead, the Case Manager's reasonable and appropriate guidance and discretion are used to assist the participant in accepting personal responsibility and achieving self-sufficiency.

DISCUSSION

The Appellant was a recipient of WV WORKS cash assistance, who was sanctioned or penalized for failing to obtain the required number of work activity hours for the month of April 2018. The Department's representative testified that the Appellant was penalized for his failure to obtain his hours at a job development class known as EXCEL and by participating in a drug addiction treatment program.

However, the Department did not follow policy in imposing this sanction. Policy found in the WV IMM §14.8.4 states that before a sanction may be imposed, the WV WORKS worker must schedule and hold a case staffing. The WV IMM reads as follows regarding the case staffing: "The Worker must document in [case] comments the dates the case staffing was scheduled and also document the outcome of a completed case staffing on a DFA-WVW-6 [a form which reports the case staffing attendees and which outlines the matters discussed during the staffing] and in comments . . ."

The Department did not provide as evidence a DFA-WVW-6. The Department's representative provided as evidence copies of recordings or brief narratives made in the Appellant's case record (Exhibit D-11). One recording, made on April 25, 2018, reads as follows: "Per EXCEL instructor [Appellant] has had 2 NC/NS did not attend activity 4/23 or 4/24 this is a two parent household and 150 hours a month are needed and will be short 4/18 scheduled good cause this day." Another recording, made on May 4, 2018, reads: "[Appellant] failed to keep scheduled good cause meeting on 5/3/18 at 10:00 AM. No good cause will be given and 2nd sanction will start 6/18 – 11/18 as now 2 sanctions . . ." The case recordings do not document that a case staffing was scheduled.

Because the Department did not document that a case staffing was scheduled or held, the sanction was not imposed according to policy. Therefore, the sanction should not have been imposed on the Appellant's receipt of WV WORKS cash assistance.

CONCLUSION OF LAW

The Department did not provide a preponderance of evidence to support its position that it acted correctly in imposing a second sanction upon the Appellant's receipt of WV WORKS for failing

to participate for the required number of hours in work activities for the month of April 2018, pursuant to IMM Chapter 14, §14.8.4.

DECISION

It is the decision of the State Hearing Officer to **reverse** the Department's decision to impose a second sanction upon the Appellant's receipt of WV WORKS cash assistance, thus discontinuing his eligibility for this benefit for six months.

ENTERED this 8th Day of August 2018.

**Stephen M. Baisden
State Hearing Officer**