



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
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**Jolynn Marra
Interim Inspector General**

May 21, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:19-BOR-1434

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,

Danielle C. Jarrett
State Hearing Officer
Member, State Board of Review

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

cc: Robert Meade, Department Representative

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

██████████,

Appellant,

v.

Action Number: 19-BOR-1434

**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 April 25, 2019, on an appeal filed March 12, 2019.

The matter before the Hearing Officer arises from the February 25, 2019 decision by the Respondent to terminate benefits under the West Virginia Works Program (WV WORKS) due the Appellant receiving benefits for 24-months without being exempt from or involved in a work activity.

At the hearing, the Respondent appeared by Robert Meade, Family Support Specialist, WVDHHR. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, the Appellant's mother. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notice of Decision, dated February 25, 2019
- D-2 West Virginia Income Maintenance Manual (WV IMM) §§ 18.1.1 through 18.1.2; WV IMM § 18.8.2
- D-3 eRAPIDS computer system screenshot printouts of Case Summary, Unearned Income, Data Exchange – SSA Benefit Details, Data Exchange – SSA State Date Exchange, Case Comments, and Individual Comments
- D-4 eRAPIDS computer system screenshot printouts of Client Summary- WV WORKS, West Virginia Department of Health and Human Resources (DHHR) WV WORKS – Self-Sufficiency Plan (SSP), WV WORKS Personal Responsibility Contract (PRC), DHHR Division of Family Assistance Participant Time Sheet, and Letter of Correspondence regarding 24-month closure

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 for a two-person Assistance Group (AG).
- 2) On October 24, 2018, the Appellant was determined incapacitated by the Respondent's Medical Review Team (MRT). (Exhibit D-3)
- 3) On November 27, 2018, the Appellant completed a WV WORKS redetermination. At that time, the Appellant was instructed to volunteer at [REDACTED] for her monthly activity. (Exhibit D-3)
- 4) On January 7, 2019, the Respondent's Social Security Administration (SSA) State Data Exchange claim details indicated the Appellant had capacity for substantial gainful activity. (Exhibit D-3)
- 5) On February 5, 2019, the Appellant signed the WV WORKS Personal Responsibility Contract (PRC) and Self-Sufficiency Plan (SSP). (Exhibit D-4)
- 6) The Appellant agreed to maintain five (5) hours weekly or twenty (20) hours monthly in an activity. (Exhibit D-4)
- 7) The Appellant was scheduled to begin as a volunteer at [REDACTED] for her work activity on February 11, 2019. (Exhibit D-4)
- 8) The Appellant attended [REDACTED] on February 11, 2019, as outlined in her PRC, for five (5) hours. (Exhibit D-4)
- 9) The Appellant's case record comments on February 12, 2019 reflected that an unknown individual at [REDACTED] contacted the Appellant's Case Manager and stated the Appellant "was asked not to return due to attitude". (Exhibit D-3)
- 10) Pertaining to the February 11, 2019 alleged incident, the February 15, 2019 case record comments indicated the Appellant was allegedly "not welcome back" to activity due to "being belligerent [*belligerent*], threatening [*threatening*] other workers, and was being rude to customers. Client has intimidated the other volunteer workers as well as the coordinator." (Exhibit D-3)

- 11) Pertaining to the February 11, 2019 alleged incident, the February 22, 2019 case record comments indicated the Appellant “has displayed threats to any organization she has been assigned to her activity.” The Case Manager also indicated the Appellant has “jeopardized [*jeopardized*] repoor [*rapport*] with out side [*outside*] venders [*vendors*] due to her threats and hostility.” (Exhibit D-3)
- 12) On February 25, 2019, the Respondent issued a notice to the Appellant advising that the Appellant’s WV WORKS benefits would stop, effective April 1, 2019, due to the receiving benefits for 24-months without being exempt from or involved in a work activity. The notice also indicated that no one was eligible for WV WORKS. (Exhibit D-1)
- 13) On February 27, 2019, the Appellant submitted a participation activity timesheet for February 2019 travel reimbursement which was not approved.
- 14) The Appellant’s Case Manager failed to conduct a required home visit to discuss the 24-month requirement prior to closure. (Exhibit D-3)
- 15) On February 28, 2019, the Appellant’s Case Manager filed a written report related to a 24-month closure. (Exhibit D-4)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) § 1.5.21 reads the SSP is a working document and revisions are made when either the participant or the Worker believes it is necessary. Frequent changes are expected as the participant progresses towards his goal.

WV IMM § 1.5.21.C explains that changes may be made to the SSP when the participant and the Worker agree that changes are appropriate. These changes may be a result of identifying a new impediment to a goal, acceleration of the progress toward self-sufficiency, or any other change in the client’s circumstances. It may also be changed based on the addition of available services to the area or the less of such services.

WV IMM § 10.5.4.G explains that the Worker is responsible for ensuring, on an ongoing basis, that the participation status of each client is consistent with the terms of his PRC and SSP. Any change in the household circumstances must be evaluated and the PRC and SSP are changed as appropriate.

WV IMM § 14.7 explains that participants are not automatically exempt from the five- hour per week participation requirement due to being in one of the applicable exemption components of undocumented aliens and aliens under the five-year ban; parents, step-parents, or caretaker relatives receiving Supplemental Security Income (SSI); caring for a disabled family member; minor parents who are not head of the household; and grandparents and other non-parent caretaker relatives.

WV IMM § 18.1.1 reads WV WORKS expects parents to support their own dependent children. Every parent who is included in a payment and any non-recipient Work-Eligible Individual in the household has a responsibility to participate in an activity to help prepare for, obtain, and maintain gainful employment.

WV IMM § 18.1.2 defines a Work-Eligible individual as a parent included in the WV WORKS AG, unless the individual is a minor parent and not the head-of-household, a noncitizen who is ineligible to receive assistance due to his or her immigration status, or a recipient of Supplemental Security Income (SSI) benefits. The PRC is a contract between each of the adult members of the WV WORKS AG and the Case Manager. Completion and signature of the PRC form is required prior to approving the WV WORKS AG. 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. In addition, the SSP identifies the circumstances which impede attainment of the established goals and specifies the services needed to overcome the impediments.

WV IMM § 18.4.5.A explains that all hours of participation in activities must be verified. A timesheet signed by the participant and the employer listing the days worked must be submitted for transportation requests.

WV IMM §18.8.2 WORK Participation as an Eligibility Requirement at 24 Months of Benefit Receipt provides in part:

All work-eligible parents whose households are receiving WV WORKS cash assistance are required to participate in a work activity when the participant has received program benefits for 24-months. When a participant has received 24-months of WV WORKS benefits, being engaged in work is an eligibility requirement. The months of WV WORKS benefits do not have to be consecutive. Work, for the purpose of meeting the 24-month limit, is defined as participation in one or more activities for a minimum of five hours per week (averaged)...

The activities in which the parent may participate and be considered engaged in work include, but are not limited to, the following:

- Community Service programs are those structured programs in which WV WORKS participants perform work that provides a direct benefit for the community and are supervised directly by a community agency.

The procedure to follow prior to notification of AG closure is as follows:

Step 1: The Care Manager must conduct a home visit to discuss the 24-month work requirement, explain the consequences of failing to meet this requirement, and to gather information described below. An office visit or telephone call cannot be substituted for the home visit.

Step 2: After the home visit, the Case Manager and/or Supervisor must file a written report in the case record and a detailed recording about the circumstances surrounding AG closure. The report must contain, at a minimum, the following information. Any other information deemed appropriate should be included.

- Case name, case number, county of residence, address, telephone number
- Number of parents and number of children in the home
- Number of office visits in the past 12 months
- Number of home/work site visits in the past 12 months
- Number of referrals provided to the AG for help in finding their own placement(s) of five hours or more, and date(s) of those referrals
- Number of sanctions that have been or are currently being imposed and information about sanctions still pending
- Whether or not the participant met his work participation requirement in any of the past 12 months, and if so, which months and why the participation ended
- Any special or unusual circumstances in the family
- Case Manager and/or Supervisor decision, including reason, about whether or not the family should continue to eligible beyond 24 months without meeting the minimum five-hour week requirement.

Step 3: If the decision is to close the WV WORKS AG, the appropriate notice procedures are followed.

When the case is closed due to failure to meet the work requirement at the end of the 24-month limit, the parent must actually be engaged in work, according to the above definition, prior to approval for the 25th month.

WV IMM § 18.14 explains the Case Manager may provide participants with a known list of local appropriate Community Service sites. However, the Case Manager must not direct or “place” participants at any particular volunteer site. The Case Manager is responsible for contacting the community agency selected by the participant in order to confirm what tasks the volunteer work entails, how the placement will enhance the participant’s job skills and experience, the days and number of hours of work which will be completed each week, and what service is being provided to the community.

WV IMM § 18.19 reads that payment for support services is authorized to assist WV WORKS

participants in securing or maintaining employment or participating in other activities. The type of payment and amount of any payment made must be based on need, without receiving the payment in the amount the participant is not able to participate in an activity. The participant may also request services as the needs arise. Support services may be issued any month for which a WV WORKS payment is made.

WV IMM § 18.19.3.H explains that transportation is paid to participants who are attending an allowable activity for each day that a transportation payment is issued. When participants use private transportation, payments are intended to cover more than the cost of fuel. Daily payments for travel include a portion of the following expenses: fuel, insurance, vehicle maintenance, minor repairs and parking.

DISCUSSION

The Appellant was a recipient of WV WORKS benefits. On February 25, 2019, the Respondent issued notice to the Appellant advising her that WV WORKS benefits would terminate effective, March 31, 2019. The notice indicated that WV WORKS benefits would terminate due to the Appellant receiving benefits for 24-months without being exempt from or involved in a work activity. The notice also indicated no one was eligible for WV WORKS. The Appellant contested the Respondent's decision to terminate her WV WORKS benefits. In addition to the issue of closure, the Appellant contested the Department's decision to not provide her travel reimbursement for her February 2019 participation activity timesheet.

The Respondent had to demonstrate that policy was correctly applied in determining that the Appellant's WV WORKS benefit should be terminated due to the Appellant's failure to participate in a work activity. The Respondent argued the Appellant was asked to not return to her community service activity ([REDACTED]), was hostile and non-complaint with SSP requirements, and therefore, was ineligible for WV WORKS benefits.

On November 27, 2018, the Appellant completed a WV WORKS redetermination. The Appellant was instructed to volunteer at [REDACTED] for her monthly activity. On that same day, the Appellant's witness contacted the Appellant's Case Manager and left a message regarding [REDACTED] not contacting the Appellant as to when she could start volunteering. The Case Manager indicated she would try to get in touch with [REDACTED] on that day regarding the Appellant's volunteer status. Evidence showed the Case Manager failed to return the Appellant's telephone call regarding when she needed to start her work activity. The Appellant's Case Manager failed to schedule her PRC update when it was reported that [REDACTED] did not have volunteer availability. The Appellant's PRC was not updated by the Case Manager until February 5, 2019.

On February 5, 2019, the Appellant signed and dated SSP and PRC documents and indicated that she understood and agreed to cooperate and participate with all assignments and activities listed on her PRC and acknowledged understanding that if she did not cooperate or participate, she would be penalized. The Appellant testified that she began [REDACTED] on February 11, 2019, to comply with her SSP work activity requirements and completed five hours on that day. Evidence

confirmed the Appellant attended [REDACTED] on February 11, 2019, for five (5) hours as required.

The Respondent testified that on February 12, 2019, an unknown individual from [REDACTED] contacted the Appellant's Case Manager stating the Appellant was asked not to return to [REDACTED] or the assigned work activity "due to attitude." The Appellant's February 12, 2019 case record comments indicated the Appellant was asked "not to return to activity due to attitude." Additional case record comments were entered on February 15, 2019, and included on the Appellant's 24-month report, which alleged the Appellant was "being belligerent [*belligerent*], threatening [*threatening*] other workers, and was being rude to customers." The case record comment also indicated the Appellant "had intimidated the other volunteer workers as well as the coordinator." Additional case record comments entered on February 22, 2019 indicated the Appellant "has displayed threats to any organization she has been assigned to her activity and that she jeopardized [*jeopardized*] repoor [*rapport*] with out side [*outside*] venders [*vendors*] due to threats and hostility." This Hearing Officer found it confusing why comments were entered the day of the telephone call differed from the comments entered three to ten days later.

The Appellant's witness argued that she did not understand why the Appellant was allowed to volunteer at [REDACTED] for the full shift of five (5) hours if she was threatening others. The Appellant's witness testified the Appellant had never threatened anyone at [REDACTED] or DHHR. The Appellant's witness stated she was always with the Appellant at her DHHR appointments or that the Appellant's grandmother was with her when she was not. The discrepancies in the case recordings, along with testimony of the Appellant's witness, brings into question the reliability of the Department's recorded statements.

The February 25, 2019 termination notice issued by the Respondent reflected that the Appellant's benefits were ended due to her failure to be involved in a work activity and that she received benefits for 24-months without being exempt.

The Appellant's witness testified that she was deemed disabled by MRT. The Respondent agreed but testified policy does not offer an exemption after the receipt of 24-months of benefits due to disability. Policy permits exceptions for undocumented aliens and aliens under the five-year ban, parents receiving Supplemental Security Income (SSI), and individuals caring for a disabled family member. However, the Appellant did not meet any of the listed exemptions.

During the hearing, the Respondent argued the Appellant was not disabled based on the Department's January 7, 2019 SSA State Data Exchange claim details which indicated she had the capacity for substantial gainful employment. The Respondent also submitted case record comments from February 22, 2019, that indicated the Appellant "will never be eligible for employment." With the conflicting documentation it was difficult to determine the reliability of the Respondent's submitted evidence.

When the 24-month timeframe was met, the Appellant was required to participate in a work activity for a minimum average of five (5) hours weekly. It is unknown if the Appellant had received 24-months of WV WORKS benefits at the time she was instructed to do a work activity. The Respondent failed to provide accurate documentation of how many months of WV WORKS

benefits the Appellant had received. The Respondent's evidence demonstrated conflicting information. While the Appellant did not dispute that she had received 24-months of WV WORKS, the Respondent's February 22, 2019 case recording and the February 26, 2019 case recording logged two conflicting statements by the same worker, that the Respondent "Closed client at 24 months [sic]..." and "In the 28 months of receiving TANF..." It is unclear if the Appellant had received the benefits for 24-months or 28-months as of February 22, 2019.

At the hearing, the Appellant indicated that she had a communication barrier and is easily frustrated when she does not understand. The Appellant's witness testified the Case Manager should have explained to [REDACTED] that the Appellant had a communication barrier due to the nature of the Appellant's condition (Attention Deficit Disorder and a stroke when she was younger). Furthermore, it seems unlikely that there were no activities available to the Appellant that would meet her needs. There was no evidence which indicated the Case Manager assisted the Appellant to find a suitable work activity to meet her needs.

The Case Manager had the duty under the SSP responsibilities to assist the Appellant with the development of a SSP based on her life situation and to assist the Appellant if her plan needed to be changed to help her meet her goal of finding employment. Policy indicates that frequent changes should be expected as participants progress towards his/her goal. Furthermore, policy states the Case Manager had the responsibility to ensure, on an ongoing basis, that the Appellant's participation status was consistent with the terms of her PRC and SSP. Any change in the Appellant's circumstances must be evaluated and the PRC and SSP changed as appropriate. It is also noted, the Appellant's 24-month closure report only indicated an activity from February 2017 and the November 2018 activity which the Case Manager failed to follow through with the Appellant.

The Appellant also argued she did not receive her travel reimbursement for her February 2019 participation activity timesheet. The Respondent agreed payment was not approved because the Appellant failed to sign the form. The Respondent testified that if the Appellant came to the local DHHR office and signed her February 2019 timesheet, he would instruct the Case Manager to process her travel reimbursement.

Policy requires the Case Manager take several actions prior to case closure, including making a home visit to address the 24-month requirement and filing a written report for the case record with information concerning the participant's case history. Conducting the 24-month home visit is not an optional step. Policy is clear that the home visit must be completed and that an office visit or telephone call cannot be substituted for the step. The Respondent testified that a 24-month home visit was not conducted due to the safety of the Case Manager. It should be noted the Case Manager conducted a home visit with the Appellant on November 8, 2018, and that there has been no change in the Appellant's household members since the visit. There was no evidence of any threats prior to the February 12, 2019 log of the alleged statement by the unknown [REDACTED] worker. Furthermore, the alleged statement made on February 12, 2019 did not match the case record comments made on the day following the telephone call allegedly received by the Case Manager. The Respondent's argument that the Case Manager failed to complete the 24-month home visit due to safety concerns was not convincing.

The Respondent testified the Appellant is hostile towards DHHR staff and supervisors and the Appellant is not appropriate for WV WORKS as she is unwilling to comply with the rules set forth in order to receive WV WORKS benefits. Evidence failed to demonstrate the Appellant was hostile and non-cooperative. Evidence demonstrated the Case Manager failed to assist the Appellant with her barriers and needs and failed to complete a required 24-month home visit. Because the lack of documentation, conflicting information, and a required 24-month home visit that was not conducted, the Respondent failed to establish case closure was appropriate and its decision of closure cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Because the Appellant received WV WORKS benefits for 24-months and did not meet an exemption she was required to participate in a work activity for a minimum average of five hours weekly.
- 2) Because the Appellant completed her activity as required in week one, she complied with her PRC requirements.
- 3) Because the Appellant's Case Manager failed to complete a 24-month home visit and failed to assist the Appellant with an updated PRC and SSP as required by policy, the Respondent's decision to terminate the Appellant's WV WORKS benefits, effective April 1, 2019, was incorrect.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to terminate the Appellant's WV WORKS benefits, effective April 1, 2019, due to failure to participate in a work activity. It is further **ORDERED** that the matter regarding her February 2019 travel is hereby **REMANDED** to the Department to determine the amount of travel reimbursement due the Appellant.

ENTERED this ____ day of May 2019.

Danielle C. Jarrett
State Hearing Officer