



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

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Cabinet Secretary**

**Board of Review
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**Jolynn Marra
Interim Inspector General**

May 2, 2019



RE: [REDACTED] v. WV DHHR
ACTION NO.: 19-BOR-1447

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Mary Thabet, DHHR / Janice McCoy, DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES

BOARD OF REVIEW

[REDACTED],

Appellant,

v.

Action Number: 19-BOR-1447

**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' Common Chapters Manual. This fair hearing was convened on April 2, 2019, on an appeal filed March 18, 2019.

The matter before the Hearing Officer arises from the Respondent's March 7, 2019 decision to impose a WV WORKS sanction resulting in the termination of the Appellant's WV WORKS benefits.

At the hearing, the Respondent appeared by Mary Thabet. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----|--|
| D-1 | Case Summary |
| D-2 | Hearing Request Notification (IG-BR-29) form |
| D-3 | Notice of decision, dated March 7, 2019 |
| D-4 | Scheduling Order, dated March 20, 2019 |

D-5	West Virginia Income Maintenance Manual (WVIMM), §18.8.1
D-6	WVIMM, §18.4.3.A
D-7	WVIMM, §18.7.8
D-8	Child Care referral, dated February 6, 2019
D-9	WVIMM, §1.5.20
D-10	WV WORKS Personal Responsibility Contract Date signed: January 30, 2019
D-11	Referral for Training/Services, dated February 6, 2019
D-12	WV WORKS – Self-Sufficiency Plan Date signed: February 6, 2019
D-13	WVIMM, Chapter 18 (excerpts) §18.12 §18.12.4 §18.4.4.C.1
D-14*	None
D-15	Participant Time Sheet forms Activity months: February 2019 and March 2019
D-16	Hearing Request form, dated March 18, 2019
D-17	WVIMM, §14.8.3

*Evidence packet from the Respondent did not include an exhibit labelled D-14

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.

- 2) On January 30, 2019, the Appellant signed a Personal Responsibility Contract (PRC), which stated she "...must develop a Self-Sufficiency Plan" as part of her PRC, and that she must follow the Self-Sufficiency Plan (SSP) or she may be sanctioned. (Exhibit D-10)
- 3) On February 6, 2019, the Appellant signed a Self-Sufficiency Plan (SSP), which noted she was "Responsible for 20 [hours] weekly in February; 30 hours [weekly] March" in her assigned activity. (Exhibit D-12)
- 4) The Appellant was responsible for 128 hours of activity – converted to a monthly amount – in the month of March 2019.
- 5) The Respondent determined the Appellant failed to meet her 128-hour requirement for the full month of March 2019, on March 6, 2019.
- 6) By notice dated March 7, 2019, the Respondent advised the Appellant that "A sanction will be applied to your assistance group effective 04/01/19. This is the first sanction and will continue for 1 month. Your WV WORKS benefits will stop during the sanction period." (Exhibit D-3)
- 7) This notice (Exhibit D-3) explains the sanction is being applied because the Appellant "failed to meet the terms of the Personal Responsibility Contract by FAILING TO ATTEND AN ASSIGNED ACTIVITY."
- 8) The notice (Exhibit D-3) scheduled a good cause appointment for the Appellant with her case worker on March 15, 2019, and stated, "If this appointment is not kept, the sanction listed above will be applied to your benefits."
- 9) The Respondent did not grant good cause and the proposed sanction was implemented as noticed.
- 10) At the time of the Respondent's decision, the Appellant had completed approximately three (3) hours toward her 128-hour requirement for the month of March 2019. (Exhibit D-15)
- 11) At the time of the Respondent's decision, the Appellant had sixteen remaining dates in the month of March 2019 in which she could meet her activity requirement. (Exhibit D-15)
- 12) The Child Care referral for the Appellant noted an activity schedule for the Appellant from Monday to Friday, from 9:00 AM to 2:00 PM each of those days, or five hours (5) per day. (Exhibit D-8)
- 13) The Appellant has no prior WV WORKS sanctions.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM), at §14.8, reads, “When a member of the assistance group (AG) or non-recipient Work-Eligible Individual does not comply with requirements found on his Personal Responsibility Contract (PRC) or Self-Sufficiency Plan (SSP), a sanction must be imposed unless the Case Manager determines that good cause exists.”

At §14.8.1, the WVIMM provides the definition of sanctions, and reads: Sanctions are applied in the form of termination of WV WORKS benefits. The duration of the sanction period is determined as follows:

- First Offense - Ineligibility for cash benefits for 1 month;
- Second Offense - Ineligibility for cash benefits for 6 months;
- Third and All Subsequent Offenses - Ineligibility for cash benefits for 12 months.

DISCUSSION

The Appellant requested a hearing to contest the decision of the Respondent to terminate her WV WORKS benefits based on a first sanction. The basis of this sanction is the failure to comply with the requirements of her PRC/SSP. The Respondent must prove by a preponderance of the evidence that the Appellant did not meet the requirements of her PRC/SSP.

The Appellant signed a PRC/SSP agreeing to participate in her required activity. The Appellant was required to participate in this activity for 128 hours in the month of March 2019. The Appellant participated in this activity for approximately 23 hours in March 2019. However, the Respondent did not wait until the time sheet for the full month of March 2019 was provided, and acted based on their determination – on March 6, 2019 – that the Appellant could not comply with the March 2019 requirement based on the hours of participation confirmed at that time, or approximately three (3) hours.

Because the Respondent made its determination that the Appellant did not comply with her PRC/SSP requirements before complete information was provided (i.e., a time sheet reflecting activity for the full month of March 2019), the Respondent must show that it was correct to conclude the Appellant could not comply with her requirements for March 2019 based on the limited information available at the time of decision. Testimony and evidence support a determination at the time of decision that the Appellant could not have met her March 2019 requirement for 128 hours of participation. The Appellant had participated approximately three (3) hours at the time of the Respondent’s decision. The Appellant’s child care referral outlined her activity schedule and set a daily cap on possible participation at five (5) hours per day. The Appellant’s time sheet for March 2019 showed 16 possible dates in which she could have attended her activity after the Respondent’s decision. If the Appellant had perfect attendance for all remaining dates in March 2019, she could have completed 80 additional hours – for a total of approximately 83 – and still would have failed to meet the requirements of her PRC/SSP.

The Respondent clearly showed that the Appellant failed to comply with the terms of her PRC/SSP. The Respondent correctly imposed a first sanction resulting in the termination of the Appellant's WV WORKS benefits based on PRC/SSP non-compliance without good cause.

CONCLUSIONS OF LAW

- 1) Because the Appellant did not participate in her assigned activity for March 2019 for at least 128 hours, the Appellant did not comply with her PRC/SSP requirements.
- 2) Because the Respondent was correct in its determination that the Appellant could not have complied with her PRC/SSP requirements for March 2019 as of March 7, 2019, it was correct to notify the Appellant of its decision at that time.
- 3) Because the Appellant did not comply with the requirements of her PRC/SSP or establish good cause for that non-compliance, the Respondent must impose a sanction against her WV WORKS case.
- 4) Because the sanction against the Appellant is a first sanction, the Appellant is ineligible for WV WORKS benefits for one month.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's decision to impose a WV WORKS sanction resulting in the termination of the Appellant's WV WORKS benefits.

ENTERED this ____ Day of May 2019.

Todd Thornton
State Hearing Officer