



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

Bill J. Crouch
Cabinet Secretary

**Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
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Jolynn Marra
Interim Inspector
General

September 24, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 19-BOR-2058

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: Pamela Everly, [REDACTED] County DHHR

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

[REDACTED],

Appellant,

v.

ACTION NO.: 19-BOR-2058

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on August 14, 2019, on an appeal filed July 22, 2019.

The matter before the Hearing Officer arises from the July 15, 2019 determination by the Respondent to apply a 12-month sanction, thereby, terminating the Appellant's WV WORKS benefits.

At the hearing, the Respondent appeared by Pamela Everly, WV WORKS Worker. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV WORKS Personal Responsibility Contract (PRC), signed July 23, 2018
- D-2 DHHR Notice, dated September 20, 2019
- D-3 DHHR Notice, dated November 19, 2018
- D-4 DHHR Notice, dated November 27, 2018
- D-5 DHHR Notice, dated November 30, 2018
- D-6 DHHR Notice, dated December 4, 2018
- D-7 PRC, signed December 11, 2018
- D-8 DHHR Notice, dated January 7, 2019
- D-9 [REDACTED] documentation
- D-10 DHHR Notice, dated January 18, 2019
- D-11 DHHR Notice, dated January 25, 2019
- D-12 DHHR Notice, dated February 6, 2019

- D-13 PRC, signed February 11, 2019
- D-14 PRC, signed April 9, 2019
- D-15 DHHR Notice, dated April 26, 2019
- D-16 DHHR Notice, dated May 22, 2019
- D-17 DHHR Notice, dated May 28, 2019
- D-18 DHHR Notice, dated June 6, 2019
- D-19 DHHR Notice, dated July 15, 2019
- D-20 DHHR Notice of Pending Closure of Benefits, dated July 12, 2019
- D-21 West Virginia Income Maintenance Manual (WVIMM) §§ 14.8 – 14.8.7
- D-22 Typed Department Statement

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant was a recipient of WV WORKS benefits.
- 2) The Respondent had previously applied two sanctions on the Appellant's WV WORKS (WORKS) benefits (Exhibit D-19).
- 3) On August 20, 2019, the Respondent worker issued a notice scheduling the Appellant to attend the TABE Test and EHI on September 15, 2018 at 10:00am (Exhibit D-22).
- 4) On July 15, 2019, the Respondent issued a notice advising the Appellant that his WORKS benefits would be terminated effective August 1, 2019 due to the application of a third-level sanction based on the Appellant's failure to comply with the requirements of the Personal Responsibility Contract (PRC) (Exhibit D-19).
- 5) The July 15, 2019 notice advised that a good cause office interview appointment on July 22, 2019 had been scheduled for him (Exhibit D-19).
- 6) The July 15, 2019 notice advised that if the Appellant failed to appear for the good cause appointment that the sanction would be applied to the Appellant's WORKS benefits (Exhibit D-19).
- 7) The Appellant failed to attend the July 22, 2019 good cause office interview.
- 8) On July 23 and December 11, 2018, and February 11 and April 9, 2019, the Appellant signed a PRC and indicated that he agreed to participate with all assignments and activities

listed and indicated that he understood that failure to cooperate with the PRC may result in a penalty (Exhibits D-1, D-7, D-13 and D-14).

- 9) The April 9, 2019 PRC required that the Appellant keep all appointments and report all changes immediately between April 2019 and March 31, 2020 (Exhibit D-14).
- 10) On April 29, 2019, the Appellant reported to the Respondent that he was going to begin employment on April 29, 2019 (Exhibit D-22).
- 11) On May 3, 2019, the Respondent obtained information that the Appellant was not employed (Exhibit D-22).
- 12) The April 9, 2019 PRC required that the Appellant attend SPOKES class between April 15, 2019 and June 28, 2019 (Exhibit D-14).
- 13) The Appellant attended SPOKES 3.75 hours on April 15, 1 hour on April 18, and 6 hours on April 19, 2019 (Exhibit D-22).
- 14) On April 26, 2019, a notice was issued advising that an appointment had been scheduled for the Appellant to attend a home interview on May 6, 2019 at 11:30, a.m. (Exhibit D-15).
- 15) On May 6, 2019, the Appellant called the Respondent at 8:44 a.m. and cancelled the home interview appointment due to being in the emergency room overnight for high blood pressure (Exhibit D-22).
- 16) On May 22, 2019, a notice was issued advising that an appointment had been scheduled for the Appellant to attend a home interview on June 11, 2019 (Exhibit D-16).
- 17) On May 23, 2019, the Respondent contacted the Appellant by telephone and cancelled the June 11, 2019 home visit. The Respondent advised the Appellant by telephone that the home visit would occur on May 24, 2019 between 1 and 1:30 PM (Exhibit D-22).
- 18) On May 24, 2019, the Appellant advised the Respondent that he would be out of town and needed to reschedule the home visit (Exhibit D-22).
- 19) On May 28, 2019, a notice was issued advising that an appointment had been scheduled for the Appellant to attend a home interview on June 3, 2019 (Exhibit D-17).
- 20) The Respondent completed a home interview with the Appellant on June 3, 2019 (Exhibit D-22).
- 21) During the June 3, 2019 home interview, the Respondent verbally advised the Appellant that a 12-month sanction would be implemented due to the Appellant's failure to attend assigned work activity (Exhibit D-22)

- 22) On June 3, 2019 during the home interview, the Appellant advised the Respondent that he was suffering from stomach issues, post traumatic stress disorder, anxiety, and ADHD and had physician's appointments scheduled for June 10 and June 26, 2019 (Exhibit D-22).
- 23) On June 6, 2019, a notice was issued advising that an appointment had been scheduled for the Appellant to attend an office interview on June 13, 2019 (Exhibit D-18).
- 24) The Respondent set the June 13, 2019 office interview to update the Appellant's PRC to reflect the current status of the Appellant's case (Exhibit D-22).
- 25) On June 12, 2019, the Respondent contacted the Appellant by phone to cancel the June 13, 2019 office interview due to the Respondent worker having a death in the family (Exhibit D-22).
- 26) On June 12, 2019 by telephone, the Respondent rescheduled the Appellant's office interview to occur on June 14, 2019 (Exhibit D-22).
- 27) On June 14, 2019, the Appellant contacted the Respondent to advise that he had overslept and missed the appointment. By telephone, the Respondent rescheduled the Appellant's office interview to occur June 18, 2019 (Exhibit D-22).
- 28) The Appellant did not attend the June 18, 2019 appointment.
- 29) On July 12, 2019, the Respondent completed a Notice of Pending Closure of Benefits advising that the Appellant was required to attend an office visit on July 22, 2019 to resolve PRC non-compliance issues or his WORKS benefits would be terminated (Exhibit D-20).
- 30) The Appellant did not attend the July 22, 2019 appointment.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) § 1.5.20 Personal Responsibility Contract provides in part:

The Personal Responsibility Contract (PRC) is a contract between the Work-Eligible Individual and the worker. Failure, without good cause, to adhere to the responsibilities or any tasks listed on the PRC after signature, results in imposition of a sanction against the Assistance Group (AG).

WVIMM § 18.4.1 provides in part:

Adults who receive WV WORKS benefits are known as "Work-Eligible Individuals" and must meet a work requirement at a minimum rate of participation.

WVIMM §§ 18.4.7-18.4.7.B Establishing Disability provides in part:

Disability and incapacity for a Work-Eligible Individual may be established with or without a physician's statement. Disability without a physician's statement may be established when the disability is obvious to the Case Manager or when the individual presents with an IQ of 59 or less, established after attaining age 16.

When the individual's disability is not obvious, the Respondent worker may consider a medical report from a licensed medical professional which provides a description of the individual's condition/diagnosis, limitations on the individual's lifestyle imposed by the condition, and length of time the condition is expected to last.

WVIMM Chapter 13, Appendix C, § 6 and §18.4.7.B.3 provide in part:

The Case Manager may determine that disability is established when:

- presumptive disability is verified by psychiatrist-diagnosed mental illness, mental retardation verified through psychological testing; or
- the Appellant has any other condition which imposes limitations on the Appellant's normal way of life.

WVIMM §§ 18.7.5 and 18.7.5.E Assessment and Mental Health Testing provide in part:

The Case Manager must refer all Work-Eligible Individuals for mental health screening and for assessment to determine the individual's physical, mental, and emotional fitness. Test results or a signed mental health screening waiver must be filed in the participant's record.

WVIMM §§ 18.7 and 18.7.1 Local Office Responsibilities and Case Management provide in part:

The Case Manager must assist the participant in all reasonable ways to achieve self-sufficiency by assessing the participant's knowledge and skills and working with the participant to make informed recommendations about course of action appropriate for each individual to develop a plan that is expected to lead to self-sufficiency.

In addition to monitoring the participant's progress and changing need for support service payments, the Respondent worker has a responsibility to facilitate the individual in meeting WV WORKS goals to become self-sufficient. The Case Manager must:

- Establish, for the participant, reasonable and appropriate requirements related to the participant's capability to perform the tasks on a regular basis, including physical capacity, psychological fitness, maturity, skills, experience, family responsibilities, and place of residence. In addition,

reasonable and appropriate requirements take into account the participant's proficiency and other support services needs.

WVIMM § 18.7.4.B Referrals for Participants with Disabilities provides in part:

If at any time during case management, the participant indicates he is disabled or has a disability, the Case Manager must make appropriate referrals to agencies that may be able to provide appropriate services to the participant.

WVIMM § 18.7.4.D Missed Appointments provides in part:

Failure, without good cause (see Chapter 14.9) to keep appointments to initiate or continue the assessment process indicates a failure/refusal to cooperate or participate. The Case Manager may provide written notice of the appointments by using any approved appointment forms. The Case Manager must record that such a notice was issued and include the date/ time of the appointment. When a letter is mailed scheduling the appointment, the Case Manager must allow no less than seven calendar days. This period begins the day following the date the letter is requested in the eligibility system or when a manual letter is sent.

When an appointment is scheduled in writing and the applicant misses the appointment, a sanction may be imposed without making a second appointment, unless the applicant has good cause or contacts the Case Manager to reschedule the appointment. When an appointment is unscheduled, a sanction may not be imposed for failure to be available. Instead the Case Manager must schedule a second appointment in writing. Failure without good cause to keep the second appointment or reschedule it results in a sanction.

WVIMM §§ 14.9 and 14.9.1.E Good Cause and Physical/Mental Incapacity provide in part:

Good cause determinations must be recorded in the case management system. When an individual is experiencing a physical or mental condition for which a reasonable accommodation cannot be made, the individual's condition must be reevaluated within the time limits specified by his medical practitioner or at least quarterly. Disability or incapacity expected to last beyond six months must be submitted to the Medical Review Team (MRT) for evaluation.

DISCUSSION

The Appellant did not refute the Respondent's testimony that the Appellant did not attend his July 22, 2019 good cause appointment. Subsequent to the Appellant missing his good cause appointment, the Appellant's WV WORKS benefits were terminated. The Appellant argued that his benefits should not have been terminated.

The Respondent bears the burden of proof to verify that action taken against the Appellant was in accordance with policy. The Respondent had to prove by a preponderance of evidence that the Appellant's WV WORKS benefits were correctly terminated and a third sanction was applied

based on the Appellant's non-compliance with his Personal Responsibility Contract (PRC). The evidence verified that the Appellant signed an agreement to cooperate with the terms of the April 9, 2019 PRC. The Appellant's compliance with PRC terms to cooperate with child support and turn in time sheets by the 5th of each month were not contested.

The Appellant did not contest the Respondent's testimony that two previous WORKS sanctions had been applied. The Respondent entered evidence regarding the Appellant's failure to comply with previous PRCs. The Appellant's compliance with the July 23 and December 11, 2018 and February 11, 2019 PRC was irrelevant to determining whether or not a third sanction should be applied for non-compliance with the April 9, 2019 PRC. As submitted evidence related to PRC non-compliance between July 23, 2018 and the implementation of the April 9, 2019 PRC is not relevant, Respondent exhibits D-1 through D-13 were given little weight in the decision of this Hearing Officer.

Non-Compliance with the April 2019 PRC:

The Respondent argued that the Appellant failed to report changes, attend SPOKES, and keep appointments as required by the PRC. Pursuant to the PRC agreement, the Appellant was required to report all changes and attend all appointments between April 2019 and March 31, 2020. The Appellant argued that throughout his school years he had been enrolled in special education classes. The Appellant argued that being off of his medications created focus barriers that prevented him from attending his appointments. The Appellant testified that he has an appointment upcoming in August 2019 to resume his medications.

Failure to Report Changes

The Appellant did not contest that he failed to report changes in his employment status on one occasion as established by the evidence. The Appellant was required to attend SPOKES between April 15, 2019 and June 28, 2019. The Respondent's hearing summary reflected that the Appellant's last date of SPOKES attendance was April 19, 2019. The Appellant did not contest that he failed to attend SPOKES as required on the April 2019 PRC. The preponderance of evidence verified that the Appellant failed to comply with the April 2019 PRC requirement to attend SPOKES.

Failure to Attend Appointments:

Policy provides that the Respondent may impose a sanction when the Appellant misses a scheduled appointment, unless the applicant has good cause or contacts the Case Manager to reschedule the appointment. Pursuant to policy, a scheduled appointment is one in which the Case Manager issues a written notice including the date/time of the appointment to occur no less than seven calendar days from the date of the notice. Policy provides that when an appointment is unscheduled, a sanction may not be imposed for the individual's failure to attend until a second appointment is scheduled in writing and the individual fails to keep the second appointment without good cause.

Prior to the July 12, 2019 Notice of Pending Closure, the Appellant missed only one appointment – May 6, 2019 –that was scheduled in writing pursuant to the time frames indicated in policy. As the Appellant contacted the Respondent on the date of the appointment, prior to the appointment time, to reschedule as required by policy, the Respondent was incorrect to impose a sanction based

on the rescheduled May 6, 2019 appointment. Subsequent missed appointments – May 24, June 14, and June 18, 2019—were not scheduled in writing and as such, policy provides that a sanction may not be imposed for failure to be available when unscheduled appointments are missed. Policy provides that a sanction may be imposed upon a missed scheduled appointment unless the Appellant establishes good cause or contacts the Case Manager to reschedule the appointment. The evidence demonstrated that the Appellant routinely contacted the Respondent when he was unable to attend both scheduled and unscheduled appointments prior to the missed unscheduled June 14, 2019 appointment. Further, the evidence demonstrated that missed appointments that had been scheduled in writing to occur on June 11 and June 13, 2019 were cancelled by the Respondent. The preponderance of evidence failed to verify that the Appellant failed to comply with the April 2019 PRC requirement to attend all scheduled appointments.

Appellant's Ability to Comply with the PRC

The Respondent is required by policy to consider the Appellant's ability to comply with the terms of the PRC when developing and signing the agreement. The evidence demonstrated that the Appellant had advised the Respondent he had issues with high blood pressure and had reported on June 3, 2019 that he was suffering from stomach issues, post-traumatic stress disorder, anxiety, and ADHD and had physician's appointments scheduled for June 10 and June 26, 2019. The Appellant testified that he received special education throughout his school years and had long-existing mental health diagnoses. As the Appellant's claimed cognitive and mental health limitations would have been present at the time of the Respondent's July 2019 determination, consideration by this Hearing Officer of the Respondent's responsibility to assess the Appellant's ability to comply with the PRC is relevant in determining whether the Respondent acted correctly to terminate the Appellant's WV WORKS benefits.

While the Respondent's record reflected that the Respondent worker had checked on the Appellant's employment status, and activity and appointment attendance, no evidence was entered to demonstrate what efforts the Respondent worker had taken to assess the Appellant's physical and mental ability to cooperate with the April 2019 PRC terms. Evidence reflected that the Appellant was issued an appointment notice to attend TABE and EHI testing on September 15, 2018. The hearing summary provided by the Respondent contained non-official record-keeping notes with conflicting dates that the Appellant was to attend the testing, but affirmed that the Appellant was noticed to attend testing on September 15, 2018. The Respondent's document reflected that the Appellant failed to attend testing on September 19, 2018. Because the evidence entered by the Respondent is conflicting and unclear, this Hearing Officer could not discern whether the Respondent's responsibility to assess the Appellant's physical, mental, and emotional fitness had been met.

No evidence was entered to verify that the Respondent had followed-up with the referral for mental health screening or assessment to determine the Appellant's physical, mental, and emotional fitness and recorded the results in the Appellant's case record as required by policy. No evidence was entered to verify that the Respondent made any appropriate agency referrals upon the Appellant's report of potential disability. No evidence was entered to demonstrate that physical or mental health limitations were considered during the development of the April 2019 PRC. Although the evidence demonstrated that the December 11, 2018 PRC required the Appellant to submit a physician's statement – which he complied with at that time—the evidence failed to verify

that the Respondent had requested a physician's statement as a condition of the February or April 2019 PRCs.

Although the evidence demonstrated that the Appellant was non-compliant with his PRC requirements to attend SPOKES and report all changes, policy required the Respondent to act upon the Appellant's report that cognitive, physical, or mental health barriers prevented his ability to comply with the conditions of the PRC. No evidence was entered to establish whether the Respondent had assessed the Appellant's June 3, 2019 claim that physical, mental, and medication limitations impaired his ability to comply with the April 9, 2019 PRC. The evidence demonstrated that the Respondent worker responded, instead, by requiring the Appellant to attend further unscheduled appointments to revise the PRC and referred him for sanction when he failed to attend the unscheduled appointments. As no evidence was entered to rule out the Appellant's explanation that his PRC activities are unachievable due to his cognitive and mental health limitations, this Hearing Officer cannot clearly discern that the Respondent met its responsibility to establish reasonable and appropriate requirements related to the Appellant's physical and mental capacity to comply with the April 2019 PRC activities.

CONCLUSIONS OF LAW

- 1) When a letter is mailed scheduling an appointment and the individual misses the scheduled appointment, the Respondent may impose a sanction on the individual's WV WORKS benefits, unless the individual has good cause or contacts the Respondent to reschedule the appointment.
- 2) The Appellant missed only one appointment (May 6, 2019) that was scheduled in writing pursuant to the time frames indicated in policy.
- 3) As the Appellant contacted the Respondent on the date of the appointment to reschedule, prior to the appointment time, as required by policy, the Respondent was incorrect to impose a sanction based on the rescheduled May 6, 2019 appointment.
- 4) When the individual misses an unscheduled appointment, a sanction may not be imposed.
- 5) The May 24, June 24, and June 18, 2019 appointments were unscheduled.
- 6) The Respondent incorrectly acted to terminate the Appellant's WV WORKS benefits due to failure to comply with attending scheduled appointments.
- 7) The Respondent was required to assess the Appellant's physical, mental, and emotional fitness and to establish reasonable and appropriate requirements related to his capability to perform tasks on a regular basis.
- 8) The Respondent may impose a sanction against an individual's WV WORKS benefits when the individual fails, without good cause, to adhere to the responsibilities or tasks listed on the personal Responsibility Contract (PRC).

- 9) The evidence failed to prove that the Respondent considered the Appellant's physical, mental, and emotional fitness to comply with the SPOKES, appointment, and change reporting activities outlined on the April 2019 PRC.
- 10) The Respondent incorrectly acted to terminate the Appellant's WV WORKS benefits due to the Appellant's non-compliance with activities established on the April 2019 PRC.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to terminate the Appellant's WV WORKS benefits. The matter is **REMANDED** for re-evaluation of the Appellant's physical, mental, and emotional fitness to comply with specified Personal Responsibility Contract (PRC) activities. It is hereby **ORDERED** that all subsequent scheduling notices should be issued pursuant to policy.

ENTERED this 24th day of September 2019.

Tara B. Thompson
State Hearing Officer