



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313
304-746-2360
Fax – 304-558-0851**

**Jolynn Marra
Interim Inspector General**

January 7, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:18-BOR-2605

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: 18-BOR-2605

**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 November 15, 2018, on an appeal filed October 17, 2018.

The matter before the Hearing Officer arises from the September 26, 2018 decision by the Respondent to deny the Appellant's application for West Virginia Works (WV Works) cash assistance program due to drug testing requirements.

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

Department's Exhibits:

- D-1 Notice of Denial, dated September 26, 2018
- D-2 West Virginia Income Maintenance Manual (WV IMM) §§ 14.8.2 through 14.8.3 and §§ 18.7.16 through 18.7.16.B
- D-3 eRAPIDS electronic system screenshot of the Appellant's Case Summary, Case Benefit Summary, and Case Comments
- D-4 Drug Use Questionnaire, dated August 20, 2018

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) On August 20, 2018, the Appellant applied for WV Works cash assistance program. (Exhibit D-3)
- 2) At the time of application, the Appellant was required to complete a Drug Use Questionnaire. (Exhibit D-4)
- 3) Per the Drug Use Questionnaire (DFA-WVW-DAST-1), individuals who answer “yes” to questions 1-2 and 4-15 are scored one (1) point for each “yes” response. Individuals who answer “no” to question 3 are scored one (1) point. (Exhibit D-4)
- 4) The Appellant answered “no” to question 2 and was assessed with a score of one (1) point. (Exhibit D-4)
- 5) A score of one (1) or two (2) indicates a possible low-level degree of problems related to drug use and requires testing of the applicant.
- 6) On August 20, 2018, the Appellant was provided a Chain of Custody form to provide to MedExpress within 48 hours in order to comply with the drug testing requirements.
- 7) As of September 24, 2018, verification of a completed drug test had not been received by the Department.
- 8) On September 24, 2018, a WV Works worker contacted the Appellant via telephone and notified her that because verification of drug testing had not been returned, she was required to reapply for WV Works and re-enroll in orientation if she still wanted services. (Exhibit D-3)
- 9) During the September 24, 2018 telephone conversation, the Appellant offered to provide the top portion of the Chain of Custody form to verify she completed the drug testing requirement.
- 10) The WV Works worker indicated that the top portion of the form was not acceptable. The worker advised the Appellant to get verification from MedExpress.
- 11) The Appellant attempted to obtain verification through MedExpress.
- 12) The Appellant was advised by MedExpress that because she was the donor they were unable to give her the results for her drug testing.
- 13) On September 24, 2018, the Appellant advised the Respondent that she was unable to obtain the verification because she was the donor.

- 14) On September 25, 2018, the Appellant was denied WV Works cash assistance for failure to comply with drug testing requirements.
- 15) Policy stipulates that verification of completed drug testing is relayed through logging in to the DHHR county MedExpress access site or via email to the Department contact. (Exhibit D-3)

APPLICABLE POLICY

WV IMM § 1.2.3.A states that the worker has the following general responsibilities in the application process. The worker must obtain all pertinent, necessary information through verification, when appropriate. The worker must assist the client in obtaining information through verification, when appropriate.

WV IMM § 7.2.4 reads that the worker has the responsibilities in the verification process to assist the client when they are unsuccessful in obtaining verification and the worker must document attempts to obtain the verification.

WV IMM § 14.8.2 reads that any applicant who refuses a Drug Questionnaire, DFA-WVW-DAST-1, or a drug test is ineligible for WV Works assistance and any applicant who provides false information on the Drug Questionnaire is ineligible for WV Works assistance for 12 months.

WV IMM § 18.7.16 explains that all adult and emancipated minor applicants who would be included in the WV Works AG must complete a Drug Use Questionnaire or are ineligible for this benefit. An applicant for these purposes, means any individual who has not received WV Works for a full calendar month. The questionnaire must be completed within ten (10) business days of the initial contact showing interest in applying for this benefit in addition to all other eligibility requirements. Any applicant who provides false information on the Drug Use Questionnaire is ineligible for WV Works assistance for 12 months. Any individual who scores one (1) or more points or answers “yes” to question #11 must be referred for drug testing; all other applicants are treated in the same manner as any other WV Works applicants. The Drug Use Questionnaire is the only method which may be used to determine reasonable suspicion for drug use.

WV IMM § 18.7.16.A reads that individuals who have been determined to have reasonable suspicion for drug use must register for drug testing within two (2) business days. The WV Works worker must give a Chain of Custody Form to the applicant with the care number entered and this form must be taken to the testing site. Should unforeseen circumstances prevent the applicant from registering for drug testing within two (2) business days, the WV Works worker may allow additional time. Negative results will be posted to the county’s account on the vendor’s website. When the results of the drug testing are negative, no further action is needed by the participant. He or she is then treated in the same manner as any other WV Works participant. Positive results are emailed directly to the county contact person and are not posted online. Once drug testing results are received, WV Works benefits are approved retroactive to the date of application for WV Works.

DISCUSSION

On September 26, 2018, the Respondent issued a notice to the Appellant advising her that she was denied WV Works cash assistance due to failure to comply with the drug testing requirements. The Appellant argued that she did comply with the drug testing requirements on August 21, 2018, by completing a drug screening at MedExpress.

On August 20, 2018, the Appellant applied for WV Works cash assistance program. At that time, the Appellant was required to fill out a Drug Use Questionnaire for eligibility requirements. The Appellant answered “no” to all the questions. The Appellant testified that she answered “no” because she does not use drugs. The Respondent testified that because the Appellant answered “no” to question 3, she was assessed as a low-level probability of a drug abuse issue and was referred for drug testing.

The Appellant testified that she appeared for drug testing at Med Express on August 21, 2018. The Respondent indicated that the Department did not receive verification of the Appellant’s drug screening for August 21, 2018. The Respondent testified that if the Appellant had a negative drug screening then results would be posted to the county’s account on the vendors website and that if the Appellant had a positive result, then the results are emailed directly to the county contact person and are not posted online. The county contact person for [REDACTED] is a WV Works supervisor. The Respondent testified that it could take seven (7) to ten (10) business days before the Department receives the verification via email regarding testing results.

On September 24, 2018, the WV Works worker received a telephone call from the Appellant inquiring about her drug testing results. At that time, the worker explained to the Appellant that she needed reapply for WV Works and re-enroll in orientation if she wanted services. During the hearing, the Appellant stated that she attempted to obtain the verification by contacting Med Express and was told that because she was the donor they were unable to give her the results of her drug testing.

The Respondent had to prove by a preponderance of evidence that the Appellant did not cooperate with the requirements for drug testing. When the Appellant contacted her WV Works worker regarding her results and was unable to obtain the results herself through Med Express, the worker must assist the Appellant in obtaining information through verification with Med Express. The WV Works worker and supervisor had the responsibility in the verification process to assist the Appellant when she was unsuccessful in obtaining verification from Med Express.

CONCLUSIONS OF LAW

- 1) For WV Works eligibility, the Appellant was required to complete the Drug Use Questionnaire.
- 2) The Appellant scored (1) one point on the Questionnaire and was required to complete drug testing.

- 3) The Respondent failed to assist the Appellant in providing the necessary verification. The Department could have assisted the Appellant by contacting Med Express to see if there was a record of her completing the drug testing.

DECISION

It is the decision of the State Hearing Officer to **REMAND** the matter of the Appellant's WV Works application eligibility to the Department to assist the Appellant with verifying that she completed drug testing requirements on August 21, 2018.

ENTERED this ____ day of 2019.

Danielle C. Jarrett
State Hearing Officer