



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Bill J. Crouch  
Cabinet Secretary

Jolynn Marra  
Interim Inspector General

January 18, 2019



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 18-BOR-2679

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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

cc: Darlene Bailey, WVDHHR

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

██████████,

**Appellant,**

v.

**Action Number: 18-BOR-2679**

**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 December 12, 2018, by State Hearing Officer Stephen Baisden on an appeal filed October 31, 2018. On January 11, 2019, the appeal was reassigned to State Hearing Officer Pamela Hinzman for issuance of a decision.

The matter before the Hearing Officer arises from the October 1, 2018 decision by the Respondent to terminate benefits under the WV WORKS Program. At the hearing, the Respondent appeared by Darlene Bailey, Family Support Specialist, WVDHHR, and Cynthia Spencer, Family Support Specialist, WVDHHR. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**Respondent's Exhibits:**

- D-1    Hearing Summary
- D-2    West Virginia Income Maintenance Manual Chapters 14.8 and 14.8.1

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)    As a 24-month recipient of WV WORKS, the Appellant was assigned to participate in the Excel Program for 20 hours per month (five hours per week).

- 3) The Appellant failed to complete the assigned activity and the Respondent proposed the imposition of a first sanction on her WV WORKS benefits.
- 4) Good cause meetings were conducted on September 20, 2018 and November 27, 2018 to address the proposed WV WORKS sanction.
- 5) The Appellant was determined incapacitated by the Respondent's Medical Review Team in May 2017, and provided medical documentation in October 2018 to indicate that she is unable to participate in work activities due to health issues.
- 6) Good cause was not established because the Respondent determined that the Appellant's medical condition does not meet an exemption to the 24-month activity participation requirement.
- 7) The Appellant's first sanction was imposed for the month of January 2019.

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual Chapter 18.8.2 states that all work-eligible parents or caretakers whose households are receiving WV WORKS cash assistance are required to participate in a work activity when the participant is ready to engage in work, or when the participant has received program benefits for 24 months, whichever is earlier. 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).

*NOTE: The five-hour requirement that applies to 24-month limit cases does not apply to applicants who have received less than 24 months of WV WORKS benefits. If a participant demonstrates good cause for not meeting his work requirement, the situation must be re-evaluated monthly. If he does not continue to have good cause for not meeting his participation hours, he must be assigned to an activity and meet his required participation hours or the sanction process begins.*

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

- Unsubsidized employment;
- Subsidized public or private sector employment;
- Job Search and Job Readiness Assistance;
- On-The-Job Training (OJT) programs, such as Employer Incentive Program (EIP) contracts, may be utilized as long as the participant is assigned a number of hours that will meet his participation requirements;

- Community Work Experience, such as Joint Opportunities for Independence Program (JOIN), CWEP, or other work experience programs available in the community;
- 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;
- Provision of child care for another TANF recipient engaged in a Community Service activity; or
- Enrollment in any educational activity including high school, high school equivalency training, college, technical or vocational school, or job skills training

Any activity must be structured so that documentation is possible. A combination of these activities may be utilized to meet the participation requirements.

Good cause for not being engaged in work which meets the above definition at the end of the 24-month limit is determined according to the criteria in Section 14.9. Participants are not automatically exempt from the five-hour per week participation requirement due to being in one of the exemption components in Section 14.7. Good cause must be reviewed monthly and documentation is required.

*NOTE: The WV WORKS benefit is not stopped and no notice of pending closure is sent for failure to meet the 24-month work requirement without first completing the evaluation procedure outlined below.*

The procedure to follow prior to notification of Assistance Group (AG) closure is as follows:

Step 1: The Case 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. This 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 be eligible beyond 24 months without meeting the minimum five-hour work 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 or caretaker must actually be engaged in work, according to the above definition, prior to approval for the 25th month. See Section 1.5, to determine the beginning date of eligibility when the participant reapplies after losing eligibility because the 24-month work requirement was not met.

When the AG is closed at or after the end of 24 months for some reason other than failure to meet the 24-month work requirement, and a reapplication is made, the AG must be approved, if otherwise eligible, and the caretaker(s) given the opportunity to engage in a work activity for at least the minimum five hours per week. If the AG does not comply, a home visit must be completed prior to case closure.

West Virginia Income Maintenance Manual Chapter 14.7 states that the following are exemptions from meeting the work requirement. This does not automatically exempt appropriate individuals from the 60-month or 24-month time limits described in Sections 18.2 and 18.8. Individuals exempt from the work requirement may participate voluntarily. See Sections 1.5 and 3.21. However, no sanction is applied for failure to do so. The Case Manager must place participants who choose to participate in the appropriate work components, as well as the applicable exemption component.

- Undocumented aliens and aliens under the five-year ban

This includes those aliens who are ineligible to receive assistance due to their immigration status and those who do not meet the necessary time requirements for living in this country;

- Parents, step-parents, or caretaker relatives receiving Supplemental Security Income (SSI)

These individuals must be offered an opportunity to participate, if they so choose;

- Care for a disabled family member (TW)

A participant who is providing medically necessary care for a disabled family member who resides in the home. Medical documentation must be provided to support the need for the participant to remain in the home to care for the disabled family member. See Chapter 18. Only one participant in the assistance group (AG) at a time can be temporarily exempt for this reason.

The Case Manager must review this documentation at least once quarterly and it must be verified by a doctor's statement. This care cannot be counted as participation hours under any activity. When medical documentation is obtained that the family member is no longer disabled, the exemption ends and the participant becomes a Work-Eligible Individual and must be assigned to a countable activity. Individuals under this exemption must be placed in TW component in the case management system;

- Minor parents who are not head of household; and
- Grandparents and other non-parent caretaker relatives

West Virginia Income Maintenance Manual Chapters 14.8 and 14.8.1 (D-2) state that when a member of the 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. Information about development of the SSP is found in Chapter 18. Information about the PRC and SSP as an eligibility requirement is found in Section 1.5.

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.

WV WORKS sanctions are applied to all Work-Eligible members of a WV WORKS case, not only to the member who causes the sanction.

Once the beginning of the sanction period has started, it cannot be stopped until the appropriate time has elapsed.

### **DISCUSSION**

Policy states that all work-eligible parents or caretakers whose households are receiving WV WORKS cash assistance are required to participate in a work activity when the participant is ready to engage in work, or when the participant has received program benefits for 24 months, whichever is earlier. When a member of the Assistance Group 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. Exemptions from the 24-month requirement are found in Chapter 14.7 of the Manual. Policy requires that the case worker 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.

The Appellant contended that she has several medical conditions and that she is unable to participate in the assigned activity because she cannot sit for long periods of time. She testified

that her medical provider indicated there are no accommodations that could be made to allow her participation in the activity, although no verification of this information was provided during the hearing.

The Appellant has documented medical issues that preclude her from working. However, policy states that individuals who have received 24 months of WV WORKS benefits are required to participate in an activity for 20 hours per month unless they meet an exemption from the 24-month requirement. While the Appellant does not meet one of the exemptions cited in policy, there is no evidence that the case worker followed all procedures required prior to 24-month case closure. No documentation concerning the required home visit or written report was provided, so the Hearing Officer cannot determine whether required case closure procedures were followed.

### **CONCLUSION OF LAW**

Based on information provided during the hearing, the Respondent's decision to apply a sanction to WV WORKS benefits cannot be affirmed. The Respondent's decision is REVERSED and the case is REMANDED to the Department to ensure that required procedures are followed prior to any proposed case closure.

### **DECISION**

It is the decision of the State Hearing Officer to REVERSE and REMAND the Respondent's action to apply a sanction to WV WORKS benefits.

**ENTERED this 18th Day of January 2019.**

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**Pamela L. Hinzman  
State Hearing Officer**