



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
PO Box 1247
433 MidAtlantic Parkway
Martinsburg, WV 25402

Jolynn Marra
Interim Inspector General

May 1, 2020

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 20-BOR-1457

Dear [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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Peter VanKleeck, BCF, [REDACTED] Co. DHHR

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

██████████,

Appellant,

v.

Action Number: 20-BOR-1457

**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 28, 2020, on an appeal filed March 31, 2020.

The matter before the Hearing Officer arises from the March 16, 2020, decision by the Respondent to apply a third-level sanction, thereby, closing the Appellant's WVWORKS/WVEAP benefits for a 12-month period.

At the hearing, the Respondent appeared by Peter VanKleeck, Family Support Supervisor. The Appellant appeared *pro se*. The witnesses were sworn, and the following documents were admitted into evidence:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 West Virginia Department of Health and Human Services Disability/Incapacity Medical Assessment blank form
- D-3 West Virginia Income Maintenance Manual, (WV IMM), Chapter 14, §14.7, in part
- D-4 WV Works Personal Responsibility Contract (PRC), Self-Sufficiency Plan (original), Part 2 of 2, signed and dated December 23, 2019
- D-5 West Virginia Income Maintenance Manual, (WV IMM), Chapter 18, §18.4.7
- D-6 West Virginia Department of Health and Human Services Notice of Pending Closure of Benefits (DFA-WVW-5), dated March 13, 2020
- D-7 Notice of Office Interview, dated March 13, 2020
- D-8 Notice of benefit closure (EDC1), dated March 16, 2020

- D-9 West Virginia Department of Health and Human Services 3rd and Subsequent Sanction Summary (DFA-WVW-75), scanned date March 13, 2020
- D-10 Policy Unit approval of 3rd sanction, dated March 16, 2020
- D-11 West Virginia Income Maintenance Manual, (WV IMM), Chapter 14.9

Appellant's Exhibits:

A-1 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/WVEAP (Works) benefits.
- 2) On December 23, 2019, the Appellant met with her caseworker and signed a new Personal Responsibility Contract and Self Sufficiency Plan (PRC/SSP). (Exhibit D-4)
- 3) The signed December PRC/SSP stated the Appellant's primary goal of self-sufficiency was to "get her health back." (Exhibit D-4)
- 4) The signed December PRC/SSP noted "challenges/barriers" were health, lack of transportation, and "Fibromyalgia issues[,] client stated physician stated for her not to work[,] DIMA1 [Disability/Incapacity Medical Assessment form] given." (Exhibit D-4)
- 5) In the signed December PRC/SSP, under the section titled "Assignment/Activities", a contracted activity included "Keep appt with physician 1/2/20 DIMA1." (Exhibit D-4)
- 6) The Appellant was responsible for returning the DIMA1 form so that the worker could determine if she qualified for an exemption from work activity as outlined in the PRC/SSP. (Exhibit D-1)
- 7) The Appellant was given several due dates to return the DIMA1, the last being March 12, 2020.
- 8) The Appellant did not return the DIMA1.
- 9) On March 13, 2020, a WV Works 3rd and Subsequent Sanction Summary (DFA-WVW-75) was sent to the Division of Family Assistance (DFA) Policy Unit. (Exhibit D-9)
- 10) A Notice of Pending Closure of Benefits (DFA-WVW-5) along with a notice of a scheduled office interview case staffing appointment for March 31, 2020 was sent to the Appellant on March 13, 2020. (Exhibits D-6 and D-7)
- 11) On March 16, 2020, the DFA policy unit sent approval for the requested sanction. (Exhibit D-10)

- 12) On March 16, 2020, the Respondent issued a notice advising the Appellant that her WORKS benefits would be terminated effective April 1, 2020, due to the application of a third-level sanction based on the Appellant's failure to comply with the requirements of the PRC/SSP. (Exhibit D-8).
- 13) The March 16, 2020 notice also provided a good cause interview appointment on March 31, 2020. (Exhibit D-8)
- 14) The Respondent did not grant good cause and the proposed sanction was implemented as noticed.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM), Chapter 1, §1.5.20, in part, explains that 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).

WV IMM, Chapter 14, §14.8, directs that when a member of the AG or non-recipient work-eligible individual does not comply with requirements found on his PRC or Self-Sufficiency Plan (SSP), a sanction must be imposed unless the Case Manager determines that good cause exists.

WV IMM, Chapter 14, §14.8.1, in part, explains that 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.

Third and subsequent WV WORKS sanctions must be approved by the Division of Family Assistance (DFA) Temporary Assistance for Needy Families (TANF) Policy Unit. The Supervisor must send an email to TANF Policy Unit members and his Regional Program Manager once the prospective sanction is placed in the eligibility system with the date and time of the scheduled case staffing, along with a detailed summary on a DFA-WVW-75 outlining the reason for the sanction including:

- Case name, case number, PIN numbers;
- Current PRC;•Number of referrals provided to the AG for help in removing barriers;
- Number of home/work site visits in the past 12 months. If a home visit has not been completed within 60 days of the third or subsequent sanction request, the Case Manager must schedule, attempt and document a home visit before a sanction approval will be considered. A site visit must not be completed for this purpose.
- Any special or unusual circumstances in the family; and
- Worker, Supervisor and/or Community Services Manager (CSM) decision, including reason, about whether or not the family should be sanctioned.

This process is to ensure all challenges identified have been addressed.

The case manager determines good cause for failure to comply with the PRC and SSP. (WV IMM, Chapter 18, §18.7.1)

WV IMM, Chapter 14, §14.7, policy exempts a participant from meeting the work requirement if the participant is providing medically necessary care for a disabled family member who resides in the home. Policy requires medical documentation be provided to support the need for the participant to remain in the home to care for the disabled family member.

WV IMM, Chapter 18, §18.4.7, allows disability and incapacity **for a work-eligible individual** [emphasis added] may be established with or without a physician's statement as described in the following sections.

DISCUSSION

The Appellant was a recipient of WV WORKS/WVEAP (Works) program benefits. Because the Appellant failed to return paperwork from her physician which would exempt her from work activity mandated by policy, the Respondent imposed a third-level sanction resulting in ineligibility for a twelve-month period from the Works program.

The Appellant did not contest the fact that she did not return the DIMA1. Instead, she contended that she is exempt from work activity under the caregiver policy because she is a caregiver to her mother. The Appellant averred that her mother's medical condition was apparent to her caseworker and, therefore, medical documentation was not required. However, the policy the Appellant refers to applies to the work-eligible individual's own disability/incapacity exemption, not the caregiver exemption. The caregiver exemption specifically requires medical documentation be provided to support the need for the participant to remain in the home to care for the disabled family member.

The Appellant unconvincingly contended that she had met with her physician and presented the DIMA1 form, but the physician was unable to understand how to complete form. The Appellant testified that she was unable to contact her caseworker until the end of January or February to discuss the DIMA1. The Appellant was given additional time to complete the DIMA1 to establish a possible exemption from work activity, but she failed to do so. Consequently, on March 13, 2020, the Respondent sent notification of the pending third-level sanction and case staffing appointment to the Appellant, along with policy-required notification to the DFA policy unit. The DFA policy unit approved the imposition of the third-level sanction which resulted in the March 16, 2020 notification of termination of the Appellant's Works benefits and good cause interview. The Respondent did not find good cause to lift the sanction.

The Appellant was given several opportunities to submit the required medical documentation either for own disability exemption or a caregiver exemption, however, she failed to do so. The Respondent showed by a preponderance of evidence that the Appellant failed to comply with the terms of her PRC/SSP. The Respondent's decision to impose a third-level sanction based on PRC/SSP non-compliance is affirmed.

CONCLUSIONS OF LAW

- 1) Policy requires work-eligible individuals participate in a work activity or meet an exemption.
- 2) Under the caregiver exemption, policy requires medical documentation to support the need for the participant to remain in the home to care for the disabled family member.
- 3) The Appellant did not participate in a work activity or submit a DIMA1 form for possible exemption as required by the terms of the December 2019 PRC/SSP.
- 4) The Appellant was given several opportunities to comply with the terms of her PRC/SSP or meet a possible exemption for either her own disability/incapacity or for a caregiver exemption.
- 5) Because the Appellant did not comply with the requirements of her PRC/SSP or establish good cause for that non-compliance, the Respondent correctly decided to impose a sanction against the Appellant's Works case.
- 6) Because the sanction against the Appellant is a third-level sanction, the Appellant is ineligible for WV WORKS benefits for twelve months.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Respondent's decision to impose a third-level sanction, thereby, closing the Appellant's WVWORKS/WVEAP benefits for a 12-month period.

ENTERED this 1st day of May 2020.

Lori Woodward, State Hearing Officer