



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

**Bill J. Crouch**  
Cabinet Secretary

**BOARD OF REVIEW  
State Capitol Complex  
Building 6, Room 817-B  
Charleston, West Virginia 25305  
Telephone: (304) 558-2278 Fax: (304) 558-1992**

**Jolynn Marra**  
Interim Inspector General

December 22, 2020



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 20-BOR-2398

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 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,

Angela D. Signore  
State Hearing Officer  
State Board of Review

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

cc: Delores Smith, [REDACTED] County DHHR

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

██████████,

**Appellant,**

v.

**ACTION NO.: 20-BOR-2398**

**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' (WV DHHR) Common Chapters Manual. This fair hearing was convened on November 24, 2020, on an appeal filed October 19, 2020.

The matter before the Hearing Officer arises from the October 13, 2020 determination by the Respondent to apply a twelve (12) month sanction, thereby, terminating the Appellant's WV WORKS (WVW) benefits.

At the hearing, the Respondent appeared by Delores Smith, Family Support Specialist, DHHR. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 WV DHHR Notice of Decision, dated October 13, 2020; WV DHHR Notice of Pending Closure of Benefits, dated October 06, 2020; and WV DHHR Notice of WVW Third (3<sup>rd</sup>) and Subsequent Sanction Summary for ██████████, dated October 19, 2020
- D-2 WV DHHR WVW Personal Responsibility Contract (PRC), signed August 18, 2020; WV DHHR WVW Self Sufficiency Plan (SSP) for ██████████, signed August 18, 2020; and WV DHHR Rights and Responsibilities for ██████████, signed October 29, 2019

- D-3 E-mail correspondence between [REDACTED] and Delores Smith, dated November 05, 2020; and E-mail correspondence between April Saunders and Penny Dillon, dated October 08, 2020
- D-4 WV DHHR Participant Time Sheet, [REDACTED] County Excel Class, September 2020
- D-5 WV DHHR Participant Time Sheet, [REDACTED] County Excel Class, October 2020
- D-6 WV PATH eligibility system printout of Case Comments, dated August 28, 2020 through October 30, 2020
- D-7 WV PATH eligibility system printout of Case Comments, dated June 17, 2020 through October 19, 2020
- D-8 West Virginia Income Maintenance Manual (WVIMM) §§ 1.5.20, 14.9, 18.4.1 through 18.4.2.A, 18.7.17.F through 18.8.1.A, 14.8 through 14.8.1, and 18.7 through 18.7.2

**Appellant's Exhibits:**

- A-1 E-mail correspondence between [REDACTED] and [REDACTED], dated September 2020; E-mail confirmation of employment application, dated September 21, 2020; and E-mail correspondence between [REDACTED], Penny Dillon, WV DHHR, and [REDACTED] dated June, August, and September 2020
- A-2 E-mail correspondence between [REDACTED] and Jacquelyn Hoppe, dated July 11, 2020
- A-3 E-mail correspondence between [REDACTED] and April Robertson, dated August 19, 2020
- A-4 E-mail correspondence between [REDACTED] and Penny Dillon, dated August 30, 2020; and E-mail correspondence between [REDACTED] and Penny Dillon, dated September 1, 2020
- A-5 E-mail correspondence between [REDACTED] and Wanda Ferrell, dated September 2, 2020
- A-6 E-mail correspondence between [REDACTED] and Wanda Ferrell, dated September 2, 2020
- A-7 E-mail correspondence between [REDACTED] and Wanda Ferrell, dated October 20, 2020
- A-8 E-mail correspondence between WV DHHR Bureau of Children and Families (BCF) Client Services and [REDACTED], dated October 30, 2020
- A-9 E-mail correspondence between [REDACTED] and [REDACTED], dated September 2020; E-mail confirmation of employment application, dated September 21, 2020; and E-mail correspondence between [REDACTED], Penny Dillon, WV DHHR, and [REDACTED] dated June, August, and September 2020

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 (WVW) benefits.
- 2) The Respondent had previously applied two sanctions to the Appellant's WVW benefits. (Exhibit D-1)
- 3) On August 18, 2020, a Personal Responsibility Contract/Self-Sufficiency Plan (PRC/SSP) was established which required the Appellant to follow the PRC/SSP or she may be sanctioned. (Exhibit D-2)
- 4) On August 18, 2020, the Appellant and Respondent agreed the Appellant was required to participate with all assignments and activities listed on the PRC/SSP and that failure to do so may result in a penalty. (Exhibits D-1, D-2, D-4, and D-6)
- 5) The August 18, 2020 PRC/SSP required the Appellant to participate in an EXCEL webinar course for twenty (20) hours per week, eighty-five (85) hours per month, beginning August 18, 2020. (Exhibit D-2)
- 6) The Appellant's August 18, 2020 PRC/SSP listed *transportation* as a barrier.
- 7) The Appellant completed a total of 6.0 hours of the 85 hours required to comply with the terms of the PRC/SSP for the month of September 2020. (Exhibits D-2 and D-3)
- 8) The Appellant completed a total of 4.0 hours of the 85 hours required to comply with the terms of the PRC/SSP for the month of October 2020. (Exhibits D-2 and D-5)
- 9) On October 8, 2020, the Division of Family Assistance (DFA) policy unit sent approval for the requested sanction. (Exhibit D-2)
- 10) On October 13, 2020, the Respondent issued a notice advising the Appellant that her WVW benefits would be terminated effective November 1, 2020, due to the application of a third-level sanction based on the Appellant's failure to comply with the requirements of the signed August 18, 2020 PRC/SSP. (Exhibits D-1, D-2, D-3 and D-4)
- 11) The October 13, 2020 notice advised the Appellant of a good cause interview appointment scheduled on October 19, 2020. (Exhibit D-1)
- 12) The October 13, 2020 notice further advised that if the Appellant failed to appear for the good cause appointment that a sanction would be applied to the Appellant's WVW benefits. (Exhibit D-1)
- 13) The Respondent did not grant good cause and a third-level sanction was imposed against the Appellant's WVW benefits effective November 1, 2020. (Exhibit D-1)

## **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 § 14.8.1 Definition of a Sanction provides, in part:**

That 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.

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.

### **WVIMM § 14.9 Good Cause for Failure to Participate for WV WORKS provides, in part:**

The Case Manager has considerable discretion in imposing a sanction or granting good cause. The Case Manager must determine whether or not the participant is meeting the requirements, attempting to comply with the best of his ability, understands the requirements, and the sanction process. The Case Manager may determine that the requirement was inappropriate based upon additional assessment. In addition, the Case Manager may determine that not applying a sanction in a particular situation provides more motivation for future participation than the imposition of a sanction.

### **WVIMM § 18.4.1 WV WORKS Participation Requirements Introduction 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 §§ 18.7 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.

## **DISCUSSION**

The Respondent bears the burden of proof to establish 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 (WVW) benefits were correctly terminated and a third sanction applied based on the Appellant's non-compliance with her Personal Responsibility Contract/Self-Sufficiency Plan (PRC/SSP). Policy provides that there are no mandatory procedures or processes that must be applied to each family. Instead, the Case Manager's reasonable and appropriate guidance and discretion are used to assist the participant in accepting personal responsibility and achieving self-sufficiency. Per policy, self-sufficiency is defined as being able to provide for the family's basic needs without relying on WVW monthly cash assistance.

Pursuant to the PRC/SSP agreement, the Appellant was required to "*comply with responsibilities listed on PRC,*" "*cooperate with program requirements by being available for mandatory home visit once pandemic/social ban has been lifted,*" "*attend EXCEL class 20 hrs per week/85 hrs month,*" "*verify hours by timesheet monthly,*" "*if child care will be needed, please make plans to apply for LINK when possible,*" "*agree to make phone contact weekly with DHHR worker at ....,*" and "*work toward getting driver's license by 12/31/2020.*" The evidence demonstrated that the Appellant had a barrier of "*transportation.*" The Respondent is required by policy to consider the Appellant's ability to comply with the terms of the PRC/SSP when developing and signing the agreement. Evidence verified that both parties signed an agreement to cooperate with the terms listed on the August 18, 2020 PRC/SSP.

On October 13, 2020, the Respondent issued a notice advising the Appellant that her WVW benefits would be terminated, effective November 1, 2020, due to the application of a third-level sanction based on the Appellant's failure to comply with the requirements of the August 18, 2020 PRC/SSP. The Respondent argued that in addition to failing to meet the twenty (20) hours per week, eighty-five (85) hours per month of mandatory EXCEL courses, the Appellant also failed to return the required homework packet for the months of September and October 2020, as

established by the terms of the August 18, 2020 PRC/SSP. The Appellant did not contest the Respondent's testimony that two previous WVV sanctions had been applied.

Regarding her failure to return the assigned packets of homework, the Appellant argued that because her post office box is located in [REDACTED], a twenty (20) minute drive from her current residence, a lack of transportation hindered her ability to retrieve her mail, thus prohibiting her from obtaining the homework packets issued by the Department. Further, the Appellant argued that when she did access her mail, the packets of homework were still not received. Because she had not received her September and October 2020 homework packets, the Appellant testified she requested the Department to provide her with both packets to an alternate address (belonging to an acquaintance) of: [REDACTED]. The Appellant testified she received the reissued packets two (2) days later - October 16, 2020. Additionally, when applying for WVV benefits, the Appellant testified the Department was aware of her inability to secure consistent transportation to access her mail. This barrier was noted on the Appellant's August 18, 2020 PRC/SSP and was signed by both parties.

Policy is clear in that "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." To assist the Appellant in overcoming the barrier of securing transportation to access her mail, the Respondent offered reimbursement for all fees associated with the cost of obtaining a post office box at the [REDACTED] post office, but the Appellant failed to do so. The Respondent reasoned that because the [REDACTED] post office is "within walking distance to the Appellant's home", the Appellant would have consistent access to her mail. Because a physical address for the Appellant was not provided, establishing whether the Appellant's home is in fact within walking distance to the [REDACTED] post office cannot be determined.

The Appellant argued that when applying for WVV benefits, the WVPATH.org website provided the option of receiving all correspondence via United States Postal Service (USPS), or electronically. The Appellant contended that because she does not have transportation to her post office box, she opted to have all documentation issued electronically. Multiple exchanges of e-mail correspondence between the Appellant, the Respondent, and the EXCEL instructor, corroborated the Appellant's testimony of notifying the Respondent of her inability to obtain the September and October 2020 homework packets. Additionally, because the Respondent and the EXCEL instructor assisted the Appellant with her case on multiple dates via e-mail, and because the Appellant's testimony regarding the WVPATH.org website was unrefuted, the Appellant's argument is reasonable.

The Respondent testified that of the twenty (20) hours per week, eighty-five (85) hours per month of required EXCEL training courses established in the terms of the August 18, 2020 PRC/SSP, the Appellant had completed a total of 6.0 hours for the month of September 2020, and a total of 4.0 hours for the month of October 2020. The Respondent further added that attempts to contact the Appellant regarding her lack of class participation went unanswered. The Respondent contended the Appellant was only accessible once negative action had been taken on her case. The Appellant

unconvincingly argued she was uncertain of how to access and navigate the required EXCEL training courses, prohibiting her from completing the assigned activities.

If the Appellant was experiencing any barrier in her ability to comply with the terms of the August 18, 2020 PRC/SSP, she had the responsibility to contact the Respondent and/or the course instructor for appropriate guidance to assist in achieving self-sufficiency and overcoming any barriers prohibiting participation in the assigned courses. The evidence submitted details attempts by [REDACTED], the [REDACTED] County, W.Va. EXCEL course instructor, concerning the Appellant's lack of participation in the required EXCEL training courses. On multiple dates the instructor requested the Appellant to contact him in order to assist in overcoming any navigational barriers she may be enduring that are prohibiting her from completing the twenty (20) hours per week, eighty-five (85) hours per month EXCEL training courses.

Because the Appellant did not dispute the Department's assessment of the two previously served sanctions, the Appellant should have been aware of the importance of meeting all the terms of her PRC/SSP, specifically, her attendance of the eighty-five (85) hours per month of required EXCEL training she consented to when signing the August 18, 2020 PRC/SSP. Because the evidence verified the Appellant did not comply with this term of the PRC/SSP requirement, the Respondent acted in accordance with policy by imposing a third WVW sanction against the Appellant.

### **CONCLUSIONS OF LAW**

- 1) Because the Appellant failed, without good cause, to adhere to the terms of her PRC/SSP to participate in her assigned activity for the months of September and October 2020, for at least eighty-five (85) hours, the Respondent must impose a sanction against her WV WORKS benefits.
- 2) Because the sanction against the Appellant is a third offense, the Appellant is ineligible for WV WORKS benefits for a period of twelve (12) months.

### **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 December 2020.

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**Angela D. Signore**  
State Hearing Officer