



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

Bill J. Crouch  
Cabinet Secretary

Board of Review  
416 Adams Street Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 30018  
[Tara.B.Thompson@wv.gov](mailto:Tara.B.Thompson@wv.gov)

Jolynn Marra  
Inspector General

June 1, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 22-BOR-1430

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 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, MLS  
State Hearing Officer  
State Board of Review

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

CC: Mary Jones, [REDACTED] DHHR

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

██████████,

**Appellant,**

v.

**ACTION NO.: 22-BOR-1430**

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on April 26, 2022, on an appeal filed with the Board of Review on March 24, 2022.

The matter before the Hearing Officer arises from the Respondent's March 11, 2022 decision to deny the Appellant's request for continued WV Works support service payments.

At the hearing, the Respondent appeared by Mary Jones, ██████████ DHHR. Appearing as a witness for the Respondent was Dawn Forro, ██████████ DHHR. The Appellant appeared *pro se* and was represented by ██████████. All witnesses were sworn in and the following exhibits were entered as evidence.

**Department's Exhibits:**

D-1 West Virginia Income Maintenance Manual, §§ 1.5.6 through 1.5.7.A.2

**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 Respondent was notified that [REDACTED] is the Appellant's Authorized Representative in July 2020.
- 2) The Respondent did not make a notation of the Appellant's Authorized Representative until March 2022.
- 3) The Appellant was a WV Works participant in March 2021.
- 4) On March 18, 2021, the Respondent worker received a form from the Appellant and completed a review with the Appellant by phone due to COVID-19 restrictions.
- 5) The Respondent did not mail a DFA-2 Common Application Form (CAF), DFA-5, or DFA-RR-1 Rights and Responsibilities Form to the Appellant to sign.
- 6) Sometime after the review, the Appellant reported employment and began receiving payments for support services, including transportation.
- 7) Neither the Appellant nor her Authorized Representative were aware that she needed to provide an additional signature to complete her WV Works review process.
- 8) In December 2021, the Respondent conducted a supervisory review of the Appellant's case and determined that the Appellant was ineligible for WV Works.
- 9) In January 2022, the Appellant submitted requests for WV Works support payments for transportation.
- 10) On March 11, 2022, the Respondent issued a notice denying the Appellant's request for continued support service payments because the Appellant was "not eligible for TANF/ WV Works in the past 6 months. When a review was done on your case on March 18, 2021, you did not sign the common application form (CAF) or the Rights and Responsibilities Forms. These are eligibility requirements."

## APPLICABLE POLICY

**West Virginia Income Maintenance Manual (WVIMM) § 1.2.1.A provides in pertinent part:**

Applicants may designate a representative to act on their behalf, known as an "Authorized Representative." Each program has specific requirements related to the Authorized Representative.

No person is denied the right to apply for any program administered by the Division Of Family Assistance (DFA). Every person must be afforded the opportunity to apply for all Programs on the date he expresses interest. When it is not feasible for the applicant to be interviewed, if an interview is required or requested, on the date he expresses his interest, he must be allowed to complete the process at a later date.

**WVIMM §§ 1.2.2.B, 1.2.2.C provide in pertinent parts:**

Periodic reviews of total eligibility for recipients are mandated by federal law. These are redeterminations that take place at specific intervals, depending on the program .... The redetermination process involves basically the same activities described in the Application Process. Eligibility system changes in client notification of any changes resulting from the redetermination conclude the process.

While a redetermination is a required periodic review of total eligibility, a review may be conducted at any time on a single combination of questionable eligibility factors. The case maintenance process may involve a review or activities that update the Department's information about the client's circumstances between the application and first redetermination and between redeterminations. Changes in eligibility or the benefit amount may occur. If so, eligibility system action and client notification of any changes are required.

**WVIMM §§ 1.2.3.A provide in pertinent parts:**

The worker has the following general responsibilities in the application process ....  
The worker must:

- Accept an application from any person or his representative who wishes to apply,
- Determine if the applicant requires special assistance,
- Inform the client of his responsibilities,
- Ensure that copies of all pertinent information are placed in the client's case record or given to appropriate staff to file,
- Ensure that proper case recordings are made to document the worker's actions and the reason for such actions.

**WVIMM §§ 1.2.1.A, 1.3.1.A.2, 1.3.1.A.3, and 1.5.1 provides in pertinent parts:**

The DFA-2 is also known as the Common Application Form, or "CAF." The DFA-2 is used for determining initial and ongoing eligibility for the WV Works Program. The DFA-2 contains, at a minimum, the applicant's name, address, and signature. DFA-2 may be: completed by the worker in the eligibility system, or completed on paper when circumstances do not permit completion of the application process in the eligibility system.

The DFA-RR-1, or Rights and Responsibilities, is required each time a DFA-2 or DFA-5 is completed. The client must read, or have read to him, all the statements preceding his signature before signing the form. He must also indicate his understanding of, or agreement with, each statement by checking the appropriate block beside the statement. The Worker must provide any explanation and information the client needs to understand the statements. After completing all applicable sections, the client signs the form. Failure to sign the form results in ineligibility.

**WVIMM §§ 1.5.2, 1.5.3, 1.5.6 provide in pertinent parts:**

The date of application is the date that the DFA-2, which contains, at a minimum, the applicant's name and address, is signed. Benefits are prorated from the date of application when all other eligibility requirements are met. The individual who is interviewed must sign the DFA-2.

If the client chooses not to sign the DFA-2, the application is considered incomplete and the Worker must take appropriate eligibility system action to deny the application, complete client notification, and record in case comments that the client did not want to sign the application, and the reason for his decision. The worker must encourage the client to sign the application so there is no misunderstanding that he was denied the right to apply.

When the applicant has completed the interactive interview, and there is a technical failure that prevents the printing of the DFA-2, the Form DFA-5 must be signed by the applicant, attached and filed in the case record with the subsequently printed DFA-2. The DFA-RR-1 must also be completed and signed. He must not be required to return to the office to sign the DFA-2 when the DFA-5 has been signed.

**WVIMM §§ 9.1 and 9.3 provide in pertinent parts:**

The client must be notified in writing of the action taken on their application, and the client must be notified in writing, and usually in advance, of any action resulting in a change in benefits. Adverse action, other than those specified, require an advance notice period before any action is effective.

The DFA-NL-C, Notification Letter: Pending Change in the Benefits You Receive, is used to notify the client of case closure or a decrease in benefits when advance notice is required. A client must receive advance notice in all situations involving adverse actions except those specified by the policy. The advance notice requirement is that notification be mailed to the client at least thirteen days prior to the first day of the month in which the benefits are affected. For WV Works, an AG closure constitutes an adverse action that requires advance notice.

**WVIMM §§ 18.19 provides in pertinent part:**

Payment for support services is authorized to assist WV Works participants in securing or maintaining employment or participating in other activities.

Support services may be issued during any month for which a WV Works payment is made. In addition, some former Work-Eligible Individuals in a previous WV Works case continue to be eligible for support service payments as long as the conditions in Section 18.22 are met. This Section contains information about support services available to active assistance group (AG) members and non-recipient Work-Eligible Individuals in the household.

**WVIMM §§ 18.19.2 provides in pertinent part:**

When a request for a support service payment has been made, but no payment is issued, the Case Manager must notify the participant of the denial using the form DFA-WVW-NL-2. The Case Manager must provide a narrative explanation of the reason the payment is denied in terms and participants can easily understand. The action must be recorded in the eligibility system. Under no circumstances is it correct to give or mail a DFA-WVW-NL-2 to a participant without a Case Manager-composed explanation of the reason for the denial. The DFA-WVW-NL-2 offers the participant the right to a fair hearing on this denial and must be mailed or given to the participant with a Hearing request form.

**DISCUSSION**

The Respondent terminated the Appellant's eligibility for continued WV Works support payments and asserted that the Appellant was ineligible because the Appellant failed to sign the DFA-2 and Rights and Responsibilities during her March 18, 2022 review. The Appellant's representative argued that they had not received any requests to sign documents and did not receive timely notification of the Appellant's WV Works eligibility.

The Respondent had to prove by a preponderance of the evidence that the Appellant was ineligible for WV Works support payments because she failed to meet her responsibility to sign the DFA-2 and Rights and Responsibilities forms. The evidence verified that the Appellant and her Authorized Representative were unaware they had an additional responsibility to provide signatures. The Respondent's witnesses testified that the forms were not mailed to the Appellant for signature. No evidence was entered to verify that the Respondent made provisions to protect the Appellant's review date or accept an alternate signature form as required by policy.

The policy stipulates that redeterminations are composed of the same activities outlined in the application process. Pursuant to the policy, when an applicant refuses to sign the DFA-2, the application is considered incomplete and the Worker must take appropriate eligibility system action to deny the application. The worker is required by the policy to encourage the client to sign the application so there is no misunderstanding that she was denied the right to apply. The worker has the additional responsibilities of determining if the Appellant requires special assistance, informing the Appellant of her responsibilities, and making proper case recordings.

The policy requires signatures of the DFA-2 and Rights and Responsibilities to complete the application and review processes for WV Works. To prevent the appearance of a denial of an Applicant's right to apply, the Respondent had the responsibility to be aware of the policy requirements and to take action to protect the Appellant's review date — including submitting forms to the Appellant for signature, informing her of her responsibility to sign, and recording the worker's action. During the hearing, the Respondent's witness testified that she received a form and conducted a telephone interview with the Appellant due to COVID-19 restrictions that required her to work from home.

The policy stipulates that the client must read or have read to her all the statements listed on the Rights and Responsibilities before signing the form. The Respondent is required to provide any explanation and information the client needs to understand the statements. The policy requires the form to be signed after the Appellant completes all the applicable sections of the form. Because the Respondent failed to provide the Appellant with the Rights and Responsibilities form, the Respondent failed to meet its obligation to provide the Appellant with the information she needed to understand and sign the form.

The preponderance of evidence established that because the DFA-2 was not complete, the Appellant's review was not completed as defined by the policy. The preponderance of the evidence also establishes that the Appellant's review was not incomplete, as defined by the policy, because the error that caused the forms to be unsigned was a Respondent error, not a choice or refusal by the Appellant to sign. As the Respondent failed to supply the Appellant with the correct forms to sign, the missing signature cannot be construed as her failure or refusal to complete the document.

The Respondent worker failed to mail the documents to the Appellant for signature. The Respondent's witness testified that the supervisor conducted a supervisory review of the Appellant's case in December 2021 and determined the Appellant was ineligible for WV Works support payments because she had failed to sign review forms during the March 2021 review. The Appellant did not refuse to sign the DFA-2 or the Rights and Responsibilities. No reliable evidence was entered to verify that the Appellant was aware she needed to provide signatures on the review forms to the Respondent.

The Respondent's denial of the Appellant's continued eligibility for WV Works support payments cannot be affirmed. The Respondent must reopen the Appellant's case and restore benefits terminated effective March 11, 2022. The Respondent may reinitiate a new redetermination process to obtain a proper signature from the Appellant for ongoing benefits, but not as a condition of eligibility for the retroactive benefits. The Appellant retains the right to appeal any subsequent Respondent action to her WV Works support payment eligibility.

### **CONCLUSIONS OF LAW**

- 1) Because the Appellant did not refuse to sign a DFA-2 during her March 28, 2021 WV Works review, her review cannot be considered incomplete.
- 2) Because the Respondent failed to provide the Appellant with the Rights and

Responsibilities form, the Respondent failed to meet its obligation to provide the Appellant with the information she needed to understand and sign the form.

- 3) The preponderance of evidence established that the DFA-2 and Rights and Responsibilities forms were not completed due to a failure of the Respondent to comply with the policy requirements.
- 4) Because the Appellant did not fail to complete her WV Works review process, the Respondent may not terminate WV Works benefits on that basis.
- 5) The Respondent incorrectly terminated the Appellant's WV Works support payments on the basis of ineligibility for WV Works in the preceding six months due to failure to sign the DFA-2 and Rights and Responsibilities forms.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to terminate the Appellant's WV Works support benefit eligibility. The matter is **REMANDED** to the Respondent to reopen and restore the Appellant's WV Works support benefits.

ENTERED this 1<sup>st</sup> day of June 2022.

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**Tara B. Thompson, MLS**  
State Hearing Officer