



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of the Inspector General  
Board of Review**

**Jeffery H. Coben, MD  
Interim Cabinet Secretary**

**Sheila Lee  
Interim Inspector General**

February 22, 2023



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 23-BOR-1040

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,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

Encl: Recourse to Hearing Decision  
Form IG-BR-29

cc: Tanya Tyler, WVDHHR

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

██████████,

**Appellant,**

**v.**

**Action Number: 23-BOR-1040**

**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 February 15, 2023, on an appeal filed January 5, 2023.

The matter before the Hearing Officer arises from the December 8, 2022 decision by the Respondent to terminate the Appellant's West Virginia Works (WV WORKS) cash assistance benefits.

At the hearing, the Respondent appeared by Tanya Tyler, Family Support Supervisor. The Appellant was self-represented. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Decision
- D-2 West Virginia Income Maintenance Manual § 18.1, 18.4
- D-3 West Virginia Works Self-Sufficiency Plan dated September 23, 2022
- D-4 West Virginia Works Participation Screen Print and Case Comments
- D-5 Disability and Incapacity Medical Assessment

**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) The Appellant was a recipient of WV WORKS cash assistance benefits.
- 2) On September 23, 2022, the Appellant completed and signed a Self-Sufficiency Plan (SSP), a requirement of the WV WORKS program. (Exhibit D-3)
- 3) The SSP required the Appellant to participate for 30 hours in an Adult Basic Education (ABE) program for the month of October.
- 4) The SSP required the Appellant to participate for 85 hours in an ABE program for the month of November.
- 5) The Appellant did not complete the required hours of the ABE program as required by the SSP.
- 6) On November 9, 2022, the Appellant reported her pregnancy and her inability to participate with the SSP.
- 7) On November 9, 2022, the Appellant provided an incomplete Disability and Incapacity Medical Assessment which indicated she was able to complete 5 weekly hours of participation in a work activity with accommodations. (Exhibit D-5)
- 8) On December 7, 2022, the Respondent implemented a sanction against the Appellant's WV WORKS cash assistance benefits for failure to participate with the SSP.
- 9) On December 7, 2022, the Appellant provided an additional Disability and Incapacity Medical Assessment which indicated that she was able to work from home and complete 5 weekly hours of participation in a work activity with accommodations. (Exhibit D-5)
- 10) On December 8, 2022, the Respondent issued a Notice of Decision which indicated that a first sanction was applied to the Appellant's WV WORKS cash assistance benefits and those benefits would terminate effective December 31, 2022.
- 11) A Good Cause or Case Staff Meeting was completed on December 16, 2022, with good cause not being granted for the Appellant's failure to participate with the SSP.

## **APPLICABLE POLICY**

**West Virginia Income Maintenance Manual § 18.1.2** documents in part:

**WORK-ELIGIBLE INDIVIDUAL** A Work-Eligible individual is a parent, a caretaker included in the WV WORKS AG, or a minor child head-of-household receiving WV WORKS assistance unless the individual is:

- A minor parent and not the head-of-household or spouse of the head-of-household; or
- A noncitizen who is ineligible to receive assistance due to his or her immigration status; or
- A recipient of Supplemental Security Income (SSI) benefits.

**PERSONAL RESPONSIBILITY CONTRACT (PRC)** The PRC (form DFA-PRC-1) is a contract between each of the adult or emancipated minor members of the WV WORKS AG, or non-recipient Work-Eligible Individual(s), and the Case Manager, as the representative of the DHHR. Completion and signature of the PRC form is required prior to approving the WV WORKS AG.

A separate PRC is completed and signed by each adult and emancipated minor in a WV WORKS AG, and any non-recipient Work-Eligible Individuals in the household. The participant's signature indicates that he understands and accepts the responsibility inherent in the program. The PRC is the same for all WV WORKS participants. It states the purpose of the WV WORKS Program and lists the participant's rights and responsibilities.

**SELF-SUFFICIENCY PLAN (SSP)** The SSP (form DFA-SSP-1) is a negotiated contract between each of the adult or emancipated minor members of the WV WORKS AG, or non-recipient Work-Eligible Individual(s), and the Case Manager, as the representative of the DHHR. The SSP is specific to each participant. It lists the goals, as well as the tasks necessary to accomplish the goals, including specific appointments, assignments, and activities for the adult/emancipated minor. In addition, the SSP identifies the circumstances which impede attainment of the established goals and specifies the services needed to overcome the impediments. A separate SSP is completed for each adult and emancipated minor in a WV WORKS AG, and any non-recipient Work-Eligible Individuals in the household. Completion and signature of the SSP is required to be completed within 10 days of the initial contact when the client expresses an interest in applying for WV WORKS. The SSP is a working document and revisions are made when either the participant or the Case Manager believes it necessary. Frequent changes are expected as the participant progresses toward his goal.

**West Virginia Income Maintenance Manual § 18.4.1** documents in part:

Each adult and emancipated minor who receives WV WORKS benefits and non-recipient Work Eligible Individual must meet a work requirement at a minimum rate of participation. The work requirement does not necessarily mean that the participant must be employed. Work, however, is the focus of WV WORKS.

**West Virginia Income Maintenance Manual § 18.4.2.A** documents in part:

Families that do not meet the definition of a two-parent family are considered “All Family” Households regardless of the number of parents or other adults included in the household. All Family Households include, but are not limited to, the following situations:

- Families with only one parent living in the home, whether he is included in the AG or is a non-recipient Work-Eligible Individual.
- Families with two parents with a common child living together and one is excluded from the WV WORKS payment due to one of the following reasons:
  - Minor parent who is not the head-of-household;
  - Ineligible noncitizen due to immigration status; or
  - SSI recipient.
- Families with one parent and one stepparent included in the benefit when they have no common child.
- Families with one or two non-parent caretaker relatives included in the WV WORKS payment.

**West Virginia Income Maintenance Manual § 18.4.2.A.1** documents in part:

A minimum of 85 hours of minimum participation hours must be attributable to one or more of the Core Work Activities.

**West Virginia Income Maintenance Manual § 18.4.7.B.2** documents in part:

Generally, the statement must contain enough information to allow the Case Manager to determine if the participant is disabled. If the physician makes a definite statement that the participant is permanently and totally disabled, no further information is needed. Usually, however, the physician describes the situation, and the Case Manager must make the determination. In these situations, the statement must contain:

- The type of condition, including the diagnosis if known;
- Any unusual limitations the condition imposes on the participant's lifestyle; and •
- The length of time the condition is expected to last. This is required only to set a control for reevaluation; there

**West Virginia Income Maintenance Manual § 18.4.7.B.3** documents in part:

Once the necessary information is received, the Case Manager makes the determination based on the following guidelines:

- If the condition is one listed in Appendix C of Chapter 13 as a guideline for presumptively approving an AFDC-Related Medicaid case, disability is established. No durational time limits are imposed.
- Any other condition must impose limitations on the participant's normal way of life. For example, a case of hypertension, requiring only a special diet and daily medication, does not substantially alter an individual's way of life, since eating is part of his daily

routine, and taking medication does not significantly interrupt normal activities. However, a diagnosis of hypertension requiring daily medication, special diet, frequent rest periods and avoidance of stress substantially limits a normal lifestyle.

**West Virginia Income Maintenance Manual § 14.8** documents in part:

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. 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.

**West Virginia Income Maintenance Manual § 14.8.1** documents in part:

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. A sanction is not imposed by having the client repay all or part of the benefit he has already received. A termination of cash assistance for at least one month is the only means by which a sanction is imposed.

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

**West Virginia Income Maintenance Manual § 14.9** documents in part:

All Work-Eligible Individuals must be placed into an allowable activity described in Chapter 18.10 – 18.18 on approval date after negotiation of the Self-Sufficiency Plan (SSP), unless a good cause reason discussed below exists. The participant must remain in that activity until either the case is closed at the end of the month, or the Case Manager and participant agree to change the activity.

Some reasons for granting good cause for temporarily not meeting participation requirements, the beginning date of eligibility, and the 24-month eligibility requirement are life events or problems such as, but not limited to:

- The death of a spouse, parent, child, or stepchild.
- In accordance with the Family and Medical Leave Act (FMLA) of 1993, an acute, life-threatening illness of a spouse, parent, or child that requires the client's immediate attention. This does not include individuals who are exempt from participation due to caring for a disabled family member as outlined in Section 14.7.
- The 12-week period following the placement of a child with the participant for adoption or foster care.

- The minimum suitability standards for the specific activity are not met. See Sections 18.10 – 18.18 for minimum requirements. If none are listed for the activity, the Case Manager must determine if the activity placed unreasonable requirements on the client. The Case Manager must schedule an appointment or home visit for individuals granted good cause for this reason to review the situation and possible SSP update.
- An appointment to update the SSP and place the individual in another component must be scheduled as soon as possible.
- The parent, an included non-parent caretaker, or a non-recipient Work-Eligible Individual quits employment or fails to participate in his assigned activity due to enrollment and fulltime attendance in school, training, or an institution of higher learning. The SSP must be updated and these individuals should be placed in the Vocational Educational Training (VT), Secondary School (AB), or College (CL) components as soon as possible.
- The participant is required to appear in court or for jury duty.

**West Virginia Income Maintenance Manual § 14.9.1.F.3 documents in part:**

Content of the Physician's Statement Generally, the statement must contain enough information to allow the Worker to determine if the client is disabled. If the physician makes a definite statement that the client is permanently and totally disabled, no further information is needed. Usually, however, the physician describes the situation, and the Worker must make the determination. In these situations, the statement must contain:

- The type of condition, including the diagnosis if known;
- Any unusual limitations the condition imposes on the client's lifestyle; and
- The length of time the condition is expected to last. This is required only to set a control for reevaluation; there is no durational requirement for which the condition must exist or be expected to exist.

### **DISCUSSION**

Policy requires that when a participant of WV WORKS fails to comply with the requirements of the Personal Responsibility Contract or a Self-Sufficiency Plan, a sanction must be imposed unless the Case Manager determines that good cause exists. Policy also states that a case staffing is required before a sanction can begin and that a sanction must be delayed until the case staffing has been attempted. Implemented sanctions result in the termination of WV WORKS cash assistance benefits. The penalty for a first offense sanction results in the termination of cash assistance benefits for a period of one month.

The Respondent determined that the Appellant failed to comply with her SSP by not attending ABE classes and imposed a first sanction. The implemented sanction resulted in a termination of the Appellant's WV WORKS cash assistance for a one-month period. The Respondent had to prove by a preponderance of the evidence that the Appellant failed to meet the requirements of her SSP and did not qualify for an exemption to the work requirement.

On September 23, 2022, the Appellant completed a SSP in which she agreed to participate in ABE courses for 30 monthly hours in October and 85 monthly hours in November. (Exhibit D-3) A first sanction was imposed and the Appellant's WV WORKS cash assistance benefits were terminated

effective January 1, 2023. (Exhibit D-1) On two separate occasions, November 9, 2022 and December 7, 2022 (Exhibit D-5), the Appellant notified the Respondent, through a Disability and Incapacity Medical Assessment, that her pregnancy prevented her from engaging in the work requirements set forth in the SSP. However, on both assessments, the physician documented that the Appellant could participate in an educational activity for at least five hours per week with reasonable accommodation. On December 16, 2022, a case staffing was completed in which the Respondent determined that the Appellant did not present good cause for her failure to participate with the requirements of the program.

The Appellant testified that she had multiple Doctor's excuses for her absences from the assigned activity. The Appellant testified that she maintained contact with her case worker and related her difficulties with her pregnancy. The Appellant testified that she was experiencing some hemorrhaging with her pregnancy and completed the Disability and Incapacity Medical Assessment. The Appellant purported that she was able to work from home to complete the requirements of the program and had her physician document the information in the medical assessment. (Exhibit D-5)

Adults who receive WV WORKS cash assistance benefits must meet a work requirement at the minimum rate of participation, unless otherwise exempt. The Appellant was required to participate in ABE classes for a total of 85 monthly hours for November. While the Appellant related a medical condition which inhibited her ability to meet the work requirement, there was no evidence to demonstrate that she presented a disability to exempt her from the requirements. All medical assessments provided to the Respondent indicated that the Appellant could participate, with accommodation, for at least 5 weekly hours in the work requirements. There was no evidence submitted to indicate that the Appellant was meeting the minimum work requirements of 5 weekly hours for the program; therefore, the Respondent was correct in its decision to sanction the Appellant's WV WORKS cash assistance benefits and terminate benefits for one month.

### **CONCLUSIONS OF LAW**

- 1) Adult and emancipated minors who receive WV WORKS cash assistance benefits must meet a work requirement at the minimum rate of participation, unless otherwise exempt.
- 2) The Appellant was required to participate in 85 monthly hours of ABE classes effective November 2022.
- 3) With accommodation, medical assessments revealed that the Appellant could participate in an activity for at least 5 hours per week.
- 4) Evidence revealed that the Appellant did not participate in the minimum ABE requirements agreed upon in the Self-Sufficiency Plan.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Respondent's decision to implement a first sanction against the Appellant's WV WORKS cash assistance benefits.



**ENTERED this \_\_\_\_\_ day of February 2023.**

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Eric L. Phillips  
**State Hearing Officer**