

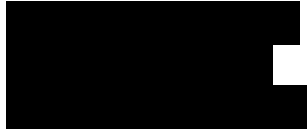


**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Jeffrey H. Coben, M.D.
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

May 18, 2023



Re: [REDACTED] v WV DHHR
ACTION NO.: 23-BOR-1518

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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

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

cc: Debra King, WV DHHR, [REDACTED]

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

IN THE MATTER OF:

ACTION NO.: 23-BOR-1518

██████████,

Appellant,

v.

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on May 03, 2023, on an appeal filed April 12, 2023.

The matter before the Hearing Officer arises from the March 27, 2023 determination by the Respondent to terminate the Appellant's West Virginia WORKS (WVW) program cash benefits.

At the hearing, the Respondent appeared by Debra King, Family Support Supervisor, 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 Board of Review (BOR) Scheduling Order, dated April 13, 2023
- D-2 WV PATH eligibility system printout of Case Comments, dated January 24, 2023 through April 27, 2023
- D-3 Electronic Mail (E-mail) correspondence between Debra King and ██████████, dated December 19, 2023 through March 24, 2023
- D-4 WV DHHR WVW Self Sufficiency Plan (SSP) for ██████████, signed February 06, 2023; and WV DHHR WVW SSP for ██████████, signed February 06, 2023

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 (WVW) benefits.
- 2) The Appellant has no previous history of a WVW program sanction. (Exhibits D-2 and D-3)
- 3) On February 06, 2023, a Personal Responsibility Contract/Self-Sufficiency Plan (PRC/SSP) was established which required the Appellant and her spouse, [REDACTED] to follow the PRC/SSP or they may be sanctioned. (Exhibit D-4)
- 4) The February 06, 2023 PRC/SSP required the Appellant and her spouse, [REDACTED] to participate in 150 hours/75 hours per person of community service work, monthly, beginning February 06, 2023. (Exhibit D-4)
- 5) On February 06, 2023, the Appellant and [REDACTED] agreed to participate with all assignments and activities listed on the PRC/SSP and that failure to do so may result in a penalty. (Exhibit D-4)
- 6) The Appellant and [REDACTED] completed a combined total of 54 hours of community service work for the month of February 2023. (Exhibits D-2 and D-3)
- 7) The Appellant and [REDACTED] failed to complete the 150 hours/75 hours per person of community service work required to comply with the terms of the PRC/SSP for the month of February 2023. (Exhibits D-2 through D-4)
- 8) On March 10, 2023, the Respondent issued a notice advising the Appellant of a pending closure of benefits appointment scheduled for March 23, 2023. (Exhibit D-2)
- 9) On March 13, 2023, the Respondent issued an additional notice advising the Appellant of a good cause interview appointment scheduled on March 24, 2023. The March 13, 2023 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-2)
- 10) The Appellant and [REDACTED] failed to appear for the pending closure of benefits appointment scheduled for March 23, 2023. (Exhibit D-2)
- 11) A good cause interview was completed on March 24, 2023. Subsequent to the March 24, 2023 interview, the Respondent did not grant good cause and a one (1) month sanction was imposed against the Appellant's WVW benefits effective May 01, 2023. (Exhibit D-2)
- 12) On March 27, 2023, the Respondent issued a notice advising the Appellant that her WVW benefits would be terminated effective May 01, 2023, due to the application of a sanction based on the Appellant's failure to comply with the requirements of the signed February 06,

2023 PRC/SSP. (Exhibits D-2 and D-3)

- 13) On March 27, 2023, the Appellant requested a Fair Hearing based on the Notice of Termination due to failure to comply with the requirements of the signed February 06, 2023 PRC/SSP. (Exhibit D-2)

APPLICABLE POLICY

West Virginia Income Maintenance Manual §1.2.4 reads:

The client's responsibility is to provide complete and accurate information about his or her circumstances so that the worker can make a correct determination about his or her eligibility.

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

West Virginia’s implementation of Temporary Assistance for Needy Families (TANF), provides monthly cash assistance along with a variety of employment and education related services to low income families with dependent children with the goals of assisting economically dependent and at-risk families to become self-supporting, enhancing the well-being of children, and assisting families near the poverty level to remain self-sufficient. 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 first 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 “*obtain full time employment, complete 75 monthly hours for HH, report changes as they occur, call legal aid about drivers license, call DMV about drivers license, complete 75 monthly hours, return timesheets by the 5th of each month, report when self employment begins, register at workforce and update monthly,*

work with workforce worker, apply at [REDACTED] for job opening, stop at RPR/save a tool today for job,” and “complete vol hrs at old high school.” The evidence demonstrated that the Appellant had a barrier of “drivers license.” [REDACTED] was required to “*obtain full time employment, complete 75 monthly hours for HH, report changes as they occur, register at workforce and work with that worker, turn timesheets in each month by the 5th, complete volunteer form, complete 75 monthly hours for HH, apply at state jobs-personnel.wv.gov, stop at RPR/save a tool for job app,” and “complete vol hrs at old high school.”* The evidence demonstrated that the Appellant’s husband had no barriers. 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 February 06, 2023 PRC/SSP.

On March 13, 2023, the Respondent issued a notice advising the Appellant of a good cause interview appointment scheduled on March 24, 2023. The 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. The Appellant and [REDACTED] failed to appear for the pending closure of benefits appointment scheduled for March 23, 2023; however, a good cause interview was completed on March 24, 2023. Subsequent to the March 24, 2023 interview, the Respondent did not grant good cause and a one (1) month sanction was imposed against the Appellant’s WVW benefits effective May 01, 2023. The Respondent argued that in addition to failing to meet the 150 hours per month of shared volunteer hours, the Appellant and [REDACTED] also failed to timely return the required time sheets for the months of February and March 2023, and report all changes as established by the terms of the February 06, 2023 PRC/SSP. The Respondent testified that on March 24, 2023, when the February time sheet was received, the Appellant and [REDACTED] had only completed a combined 54 hours per month of required volunteer work as established in the terms of the February 06, 2023 PRC/SSP.

The Appellant argued that on an unknown date, when the Respondent attempted to conduct a home visit, weather related conditions prohibited her from doing so, leading to confusion regarding what was required of herself and [REDACTED] for WVW program purposes. The Respondent testified that while she was not able to cross the flooding water to conduct the home interview in person, all forms and instructions were provided to the Appellant at the time the PRC/SSP was created and agreed upon, and again after the attempted home visit. The Appellant further argued that because she was without a driver’s license, and because [REDACTED] driver’s license was suspended after signing the PRC/SSP, it created a barrier for them in completing the 150 hours per month of shared volunteer hours. This barrier was noted on the Appellant’s February 06, 2023 PRC/SSP. However, the Appellant and [REDACTED] failed to report the change in circumstances regarding [REDACTED] license to the Respondent.

The Appellant further argued that additionally, on three (3) different occasions, volunteer opportunities were canceled by the facility due to weather related conditions, as further justification for their inability to complete the requirements of the February 06, 2023 PRC/SSP. The Respondent previously provided unrefuted testimony that the Appellant and [REDACTED] had only completed a combined 54 hours per month of required volunteer work. Therefore, even though three (3) different volunteer opportunities were canceled, this still would not have provided the Appellant and [REDACTED] with enough hours to satisfy the requirements of the February 06, 2023 PRC/SSP. Additionally, 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 her inability to overcome the barrier of a driver's license, the Respondent provided the Appellant with a computer in order to begin a work from home position, but the Appellant failed to do so.

If the Appellant and/or [REDACTED] were experiencing additional barriers in their ability to comply with the terms of the February 06, 2023 PRC/SSP, they had the responsibility to contact the Respondent for appropriate guidance to assist in achieving self-sufficiency and overcoming anything prohibiting participation in the assigned activity. Because the Appellant and [REDACTED] did not report additional barriers, and because the evidence verified their failure to comply with the terms of the PRC/SSP requirement, the Respondent acted in accordance with policy by imposing a first offense WVW program sanction.

CONCLUSIONS OF LAW

- 1) Because the Appellant and [REDACTED] failed, without good cause, to adhere to the terms of the February 06, 2023 PRC/SSP, the Respondent must impose a sanction.
- 2) Because the sanction against the Appellant and [REDACTED] is a first offense, they are ineligible for WVW program benefits for a period of one (1) month.

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 May 2023.

Angela D. Signore
State Hearing Officer