



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

**Sherri A. Young, DO, MBA, FAAFP  
Interim Cabinet Secretary**

**Christopher G. Nelson  
Interim Inspector General**

September 22, 2023

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 23-BOR-2242

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, J.D.  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Sandra Brown, BFA, WV DHHR

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

████████████████████,

**Appellant,**

v.

**ACTION NO.: 23-BOR-2242**

**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 September 20, 2023, on an appeal filed July 17, 2023.

The matter before the Hearing Officer arises from the Respondent's May 19, 2023 decision to apply a third West Virginia Works (WV WORKS) benefits sanction, resulting in a 12-month case closure.

At the hearing, the Respondent appeared by Sandra Brown, Family Support Supervisor. Appearing as a witness for the Respondent was Tracy McAnally, Family Support Specialist. The Appellant appeared *pro-se*. The witnesses were placed under oath and the following documents were admitted into evidence:

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 West Virginia Department of Health and Human Resources Disability/Incapacity Medical Assessment (DFA-DIMA-1) blank form
- D-3 WV Works – Personal Responsibility Contract (PRC), Self-Sufficiency Plan (Original), Part 2 of 2, signed and dated March 17, 2023
- D-4 Letter from ██████████ MD, Family Medicine, ██████████, dated May 16, 2023
- D-5 West Virginia Income Maintenance Manual (WV IMM), Chapter 14, §41.8.1 (excerpt)

- D-6 Email chain between [REDACTED] and Policy Q&A DHHR, May 17 – 18, 2023
- D-7 West Virginia Department of Health and Human Resources WV WORKS Personal Responsibility Contract, signed and dated October 13, 2022
- D-8 WV IMM, Chapter 14, §14.8
- D-9 Notice (AEO7) WV WORKS/WVEAP sanction and closure, dated May

**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/WVEAP benefits.
- 2) On March 17, 2023, the Appellant met with her case manager, Tracy McAnally, to discuss starting a required activity for continued program participation.
- 3) Because the Appellant stated she had a high risk pregnancy, Ms. McAnally provided the Appellant with a Disability/Incapacity Medical Assessment form (DFA-DIMA-1) for the Appellant's physician to fill out, sign, and to be returned by April 7, 2023. (Exhibits D-1 and D-2)
- 4) On March 17, 2023, the Appellant agreed to the updated Self-Sufficiency Plan (SSP) reflecting that the DFA-DIMA-1 was to be returned by April 7, 2023. (Exhibit D-3)
- 5) On May 16, 2023, the Appellant submitted a letter from [REDACTED], stating that the Appellant was being followed for "a high risk pregnancy" and will be "seen and monitored" regularly until delivery. (Exhibit D-4)
- 6) Ms. McAnally determined that the May 16, 2023 physician statement did not contain enough information to make a determination whether the Appellant met the criteria to be placed in a good cause component for not participating in a required activity.
- 7) The Appellant failed to return the DFA-DIMA-1.
- 8) Worker McAnally determined a sanction must be placed against the Appellant.
- 9) This is the Appellant's third sanction.

- 10) Policy requires that the Department of Family Assistance (DFA) Temporary Assistance for Needy Families (TANF) policy unit be contacted for approval of third and subsequent sanction placement. (Exhibit D-5)
- 11) On May 18, 2023, with the approval of the DFA TANF policy unit, a third sanction was placed on the Appellant's WV WORKS/WVEAP benefits case resulting in case closure for a period of 12-months. (Exhibit D-6)
- 12) On May 19, 2023, the Respondent issued a Notice of closure which indicated that a third sanction was applied to the Appellant's WV WORKS/WVEAP benefits and would terminate effective June 1, 2023, in addition to notification that a good cause meeting was scheduled for May 30, 2023. (Exhibit D-9)
- 13) A good cause meeting was completed on May 30, 2023, with good cause not being granted for the Appellant's failure to comply with the SSP.

### **APPLICABLE POLICY**

**WV IMM, Chapter 18, §18.1.1, *PROGRAM BACKGROUND***, explains in part:

The purpose of WV WORKS is to help economically dependent, at-risk families become self-supporting. It is a work-oriented, performance-based, time-limited program that emphasizes employment and personal responsibility. Intensive interaction between the participant and the Case Manager is necessary to establish and maintain the Personal Responsibility Contract (PRC) between the Department of Health and Human Resources (DHHR) and the WV WORKS participant... WV WORKS expects parents and other caretaker relatives to support their own dependent children and those in their care. Every parent and other caretaker who is included in a payment and any non-recipient Work-Eligible Individual in the household has a responsibility to participate in an activity to help prepare for, obtain and maintain gainful employment.

**WV IMM, Chapter 1, §1.5.21, *PERSONAL RESPONSIBILITY CONTRACT (PRC)***, explains in part:

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 Worker, as the representative of the DHHR... 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 AG.

**WV IMM, Chapter 1, §1.5.22, *SELF-SUFFICIENCY PLAN (SSP)***, explains in part:

The Self-Sufficiency Plan (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 Worker, 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... The participant and Worker must sign and date the initial SSP and each change or addition when they occur. The signatures indicate their

agreement to the initial SSP and subsequent changes. The participant's signature indicates that he understands and accepts the responsibility inherent in the program.

**WV IMM, Chapter 14, §14.8, *WV WORKS SANCTIONS***, states 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**. [Emphasis added]

**WV IMM, Chapter 14, §14.8.1, *DEFINITION OF A SANCTION***, states 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... The third and subsequent WV WORKS sanctions must be approved by the Division of Family Assistance (DFA) Temporary Assistance for Needy Families (TANF) Policy Unit.

**WV IMM, Chapter 14, §14.8.4, *CASE STAFFING***, directs, in part:

A case staffing is required before all sanctions start. After a sanction has been imposed, the Worker must send a pending closure notice (DFAVW-5) or system notice, which includes an appointment for a case staffing. The case staffing notice may be sent any time after notification that the sanction has been imposed, but before start of the sanction. It is recommended that the case staffing occur as soon as possible after the notification to try to avoid the sanction. When the sanction is scheduled to start prior to the case staffing, the sanction must be delayed until the case staffing has been attempted.

**WV IMM, Chapter 14, §14.9, *GOOD CAUSE FOR FAILURE TO PARTICIPATE FOR WV WORKS***, states 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...

Failure or refusal to comply, without good cause, results in imposition of a sanction and a notice of adverse action must be issued, which includes scheduling the good cause interview. The appointment date for the good cause interview must be scheduled at least seven calendar days after the day following the date the letter is requested in the eligibility system or the day following the date a manual letter is sent. If the letter is hand delivered, case comments must be made indicating the date the letter was given to the participant. If the appointment is scheduled for a date prior to the seven calendar days, the participant and the Case Manager must agree on the appointment date. See Section 9.3.3 and Section 9.3.6. A system generated letter or a manual letter (DFA-WVW-NL-1) is used.

***The Case Manager has considerable discretion in imposing a sanction or granting good cause.*** [Emphasis added] 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.

**WV IMM, Chapter 18, § 18.4.7.B.2, *Content of the Physician's Statement***, explains:

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 is no durational requirement for which the condition must exist or be expected to exist.

## **DISCUSSION**

Policy requires a sanction be imposed when a participant of WV WORKS fails to comply with the requirements of the Personal Responsibility Contract (PRC) or a Self-Sufficiency Plan (SSP), unless the case manager determines that good cause exists. Case managers are given considerable discretion in imposing a sanction or granting good cause. A case staffing or good cause meeting is required before a sanction can begin. Implemented sanctions result in the termination of WV WORKS cash assistance benefits. The penalty for third and subsequent sanctions results in the termination of WV WORKS benefits for a period of 12 months.

Because the Appellant's case manager determined that the Appellant failed to comply with her SSP by not submitting a DFA-DIMA-1 form by April 7, 2023, a sanction was imposed. As this was the Appellant's third sanction, the implemented sanction resulted in the termination of the Appellant's WV WORKS/WVEAP benefits for a 12-month period. The Respondent had to prove by a preponderance of the evidence that the Appellant failed to meet the requirements of her SSP.

On March 17, 2023, the Appellant and her case manager, Tracy McAnally, met to discuss starting a program-required participant activity. Because the Appellant stated she had a high risk pregnancy, they agreed to update the Appellant's SSP to include the return of a DFA-DIMA-1, a Disability/Incapacity Medical Assessment form, to be completed and signed by the Appellant's physician, and to be returned by April 7, 2023.

On May 17, 2023, the Appellant submitted a letter from [REDACTED], which stated that the Appellant was "being followed" for a "high risk pregnancy" and will be "seen and monitored" regularly until delivery. Ms. McAnally determined that the submitted doctor's statement did not

contain the necessary information regarding any limitations the Appellant had that prevented her from participating from an activity and deemed it insufficient to allow the Appellant to be placed in a good cause component. The Appellant never submitted a DFA-DIMA-1 form. The decision was made to apply a penalty to the Appellant for her non-compliance with the SSP. Because this would be the Appellant's third sanction, a request was made to the TANF policy unit, as required by policy, to place the sanction. On May 18, 2023, the TANF policy unit approved the placement of the sanction. On May 19, 2023, a notification was sent to the Appellant regarding the placement of a third sanction resulting in case closure for a 12-month period. A good cause meeting was completed on May 30, 2023, with good cause not being granted for the Appellant's failure to comply with the SSP.

The Appellant testified that she had lost/misplaced the DFA-DIMA-1 form and because she does not have transportation and because she had "a bunch of stuff going on," she felt that the doctor's statement was sufficient. The evidence showed that the Appellant did not attempt to contact Ms. McAnally for another DFA-DIMA-1 or to discuss the reason why she could not comply with her SSP. The decision to place a sanction on the Appellant was not made until May 18, 2023. The Appellant was given several weeks after the required submission date of the DFA-DIMA-1 prior to the imposition of the sanction. The case manager has considerable discretion as to whether a program participant has good cause for the lifting of a penalty. The required TANF policy unit approval was obtained, proper notification of the penalty and case closure were made, and good cause meeting was held in a timely manner. The Appellant did not contest the fact that this is her third sanction. The preponderance of evidence showed that the Respondent correctly placed a sanction against the Appellant.

### **CONCLUSION OF LAW**

- 1) Because the Appellant failed, without good cause, to adhere to the term of the March 17, 2023 PRC/SSP, and no good cause was granted, the Respondent must impose a sanction.
- 2) As this is the Appellant's third sanction, the TANF policy unit was contacted and approved the placement of the third sanction.
- 3) A good cause meeting was held with no determination of good cause for the Appellant's failure to comply with the terms of her PRC/SSP.
- 4) Policy requires a 12-month closure of WV WORKS/WVEAP benefits for third and subsequent penalties.
- 5) The Respondent correctly placed a third sanction to the Appellant's WV WORKS/WVEAP benefits resulting in case closure for a 12-month period.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to place a third sanction to the Appellant's WV WORKS/WVEAP resulting in case closure for a 12-month period.

**ENTERED this 22<sup>nd</sup> day of September 2023.**

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Lori Woodward, Certified State Hearing Officer