

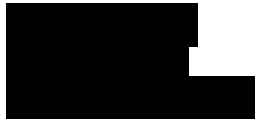


**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of the Inspector General  
Board of Review**

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

**Christopher G. Nelson  
Interim Inspector General**

January 23, 2024



RE: [REDACTED] S v. WVDoHS  
ACTION NO.: 23-BOR-3725



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 Human Services. These same laws and regulations are used in all cases to ensure 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: Anges Watson, BFA

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

██████████,

**Appellant,**

**v.**

**Action Number: 23-BOR-3725**

**WEST VIRGINIA DEPARTMENT OF  
HUMAN SERVICES  
BUREAU OF FAMILY ASSISTANCE,**

**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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on January 18, 2024, on an appeal filed December 14, 2023.

The matter before the Hearing Officer arises from the December 8, 2023 decision by the Respondent to terminate the Appellant's benefits and services under the West Virginia WORKS (WVW) cash assistance program.

At the hearing, the Respondent appeared by Agnes Watson, Family Support Specialist and Kellie Marcum, Family Support SupervisorName of Department Rep. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Hearing Request dated December 14, 2023
- D-2 Notice of Decision dated December 8, 2023
- D-3 Notice of Home Interview Appointment dated September 15, 2023
- D-4 Notice of Office Interview Appointment dated September 28, 2023
- D-5 Notice of Office Interview Appointment dated October 6, 2023
- D-6 Notice of Office Interview Appointment dated October 23, 2023
- D-7 October 2023 Participant Timesheet
- D-8 Vehicle Repair Order
- D-9 \*\*Omitted by Clerical Error

- D-10 Electronic Mail dated October 23, 2023
- D-10a Electronic Mail dated October 4, 2023
- D-10b Electronic Mail dated October 13, 2023
- D-10c Electronic Mail dated October 10, 2023
- D-10d Electronic Mail dated October 26, 2023
- D-10e Photograph of a foot
- D-10f Photograph of a foot
- D-10g Electronic Mail dated November 1, 2023
- D-11 Doctor's Statement dated December 5, 2023
- D-12 Doctor's Statement dated October 25, 2023
- D-13 Case Comments dated October 2, 2023 to December 14, 2023
- D-14 November 2023 Participant Timesheet
- D-15 Personal Responsibility Contract signed November 20, 2023
- D-16 Notice of Good Cause appointment dated December 7, 2023
- D-17 Notice of Home Interview Appointment dated January 6, 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 West Virginia WORKS (WVW) cash assistance.
- 2) The Appellant's household consisted of herself and her three children.
- 3) The Appellant was considered an all-family household.
- 4) The Appellant was required to participate in a WVW participation activity for 128 monthly hours.
- 5) The Appellant was enrolled in a Community Work Experience Program (CWEP) participant activity with the [REDACTED]. (Exhibit D-15)
- 6) The Appellant completed a Personal Responsibility Contract (PRC) dated November 20, 2023, in which she agreed to participate in the CWEP program for 30 weekly hours. (Exhibit D-15)
- 7) The Appellant previously received WVW benefits in [REDACTED] West Virginia.

- 8) The lifetime limit for receipt of WVW cash assistance is 60 months.
- 9) The Appellant has received a total of 30 months of cash assistance toward her lifetime limit.
- 10) After 24-months receipt of WVW cash assistance, an individual is required to be engaged in work activity for a minimum average of five weekly hours.
- 11) Failure to meet the weekly minimum average in a work activity results in a closure of WVW cash assistance.
- 12) A home visit was completed with the Appellant on September 26, 2023. (Exhibit D-3)
- 13) In September 2023, the Respondent lifted a closure of Appellant's WVW cash assistance due to barriers which prevented her from meeting the minimum weekly hours. (Exhibit D-13)
- 14) In October 2023, the Appellant participated in her CWEP agreement for 69.5 monthly hours. (Exhibit D-13 and Exhibit D-7)
- 15) In November 2023, the Appellant participated in her CWEP agreement for 144 hours. (Exhibit D-13 and Exhibit D-14)
- 16) On December 7, 2023, the Respondent determined that the Appellant had not participated in her CWEP activity for the first week of December 2023. (Exhibit D-13)
- 17) On December 5, 2023, the Appellant's child was ill and visited a physician. (Exhibit D-11).
- 18) On December 7, 2023, the Respondent issued a good cause appoint to the Appellant setting a meeting with at the [REDACTED] Department of Health and Human Resources for December 14, 2023 at 10:00 A.M. (Exhibit D-16)
- 19) On December 8, 2023, the Respondent issued a Notice of Decision (Exhibit D-2) to the Appellant advising her that her WVW cash assistance would terminate effective December 31, 2023, because she "received benefits for 24 months without being exempt from or involved in a work activity."

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual § 18.2.1 documents in part:

There is a lifetime limit of 60 months that a family may receive cash assistance under Temporary Assistance for Needy Families (TANF) and/or WV WORKS.

The presence of even one Assistance Group (AG) member who has reached the lifetime limit renders the entire AG ineligible.

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:
  - o Minor parent who is not the head-of-household;
  - o Ineligible noncitizen due to immigration status; or
  - o 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:

Family Has Minimum Requirement of 128 Hours

A minimum of 85 hours of minimum participation hours must be attributable to one or more of the Core Work Activities. Therefore, no more than 43 of the minimum participation hours may be attributable to one or more of the Non-Core Work Activities.

West Virginia Income Maintenance Manual § 18.4.4.C

Excused absences of up to 16 hours/month, not to exceed a maximum of 80 hours in the 12- month period, including the current month and the preceding 11 months, may be counted as hours worked in that month. Additional days/hours of absence may be considered excused if appropriate but must not count as hours of participation. Inclement weather and states of emergency are included in the 16 hours per month, maximum 80 hours/year excused absences which may count as participation.

If the participant will not meet the participation requirement when including the absence hours, do not count these absence hours for participation. Participation credit for excused absences must not be entered when sufficient hours have been entered for the work or educational activity to meet the minimum required participation rate. The hours worked include the excused hours when participation did not actually occur. An excused absence includes illness or other good cause which prevented participation. It is the responsibility of the Case Manager to determine if the absence is excused or unexcused based on contact with the employer/contractor and participant documentation. A determination of good cause may only be made by the Case Manager. Absences must not be used toward calculating the monthly participation hours, unless the Case Manager has determined that the absences meet the definition of what may be excused, and the participant was scheduled to work that day. The Case Manager must document in comments why the absences are being excused and how the reason for the absence was verified.

West Virginia Income Maintenance Manual § 18.7.8 documents in part:

After a participant has received WV WORKS for 12 months, 24 months, 36 months, or 48 months, periodic self-sufficiency evaluations are required to be conducted in either one of two ways:

- Face-to-face meeting with the participant; or
- A Supervisor/Case Manager meeting to review the case.

It is the decision of the WV WORKS Supervisor after a formal consultation with the WV WORKS Case Manager about whether or not a face-to-face meeting is required at the 12/24/36/48- month self-sufficiency evaluation point. At its discretion, the local office may choose to include the Community Services Manager (CSM) in any decision about a face-to-face meeting. At a minimum, the Supervisor and Case Manager must meet and review the case; discuss the participant's progress, barriers, and other issues affecting the family's self-sufficiency; make necessary recommendations' and arrange appropriate referrals to other agencies and services as needed. The Case Manager must arrange an office visit or home visit with the participant if the assessment and/or SSP forms need to be updated as a result of the 12/24/36/48-month evaluation meeting with the Supervisor. The Bridge to Stronger Families, DFA-WVW-Bridge, must be updated during these meetings. A full case recording must be made in comments with details of the face-to-face meeting or Supervisor/Case Manager consultation and recommendations from these 12/24/36/48-month evaluation. The DFA-WVW-CCG-2 must also be reviewed and updated during these meetings. Periodic Self- Sufficiency Evaluation Form (DFA-PSSE), an optional form, can be used at each evaluation.

West Virginia Income Maintenance Manual § 18.7.8.B documents in part:

A face-to-face evaluation or Supervisor/Case Manager meeting to review the case must be completed during the 24th or 25th month of receipt of WV WORKS following the same procedure as the 12-month evaluation.

West Virginia Income Maintenance Manual § 18.8.2 documents in part:

All work-eligible parents or caretakers whose households are receiving WV WORKS cash assistance are required to participate in a work activity when the participant is ready to engage in work, or when the participant has received program benefits for 24 months, whichever is earlier. When a participant has received 24 months of WV WORKS benefits, being engaged in work is an eligibility requirement. The months of WV WORKS benefits do not have to be consecutive. Work, for the purpose of meeting the 24-month limit, is defined as participation in one or more activities for a minimum of five hours per week (averaged).

The activities in which the parent or caretaker may participate and be considered engaged in work include, but are not limited to, the following:

- Unsubsidized employment;
- Subsidized public or private sector employment;
- Job Search and Job Readiness Assistance;
- On-The-Job Training (OJT) programs, such as Employer Incentive Program (EIP) contracts, may be utilized as long as the participant is assigned a number of hours that will meet his participation requirements;
- Community Work Experience, such as Joint Opportunities for Independence Program (JOIN), CWEP, or other work experience programs available in the community;
- Community Service programs are those structured programs in which WV WORKS participants perform work that provides a direct benefit for the community and are supervised directly by a community agency;
  - Provision of child care for another TANF recipient engaged in a Community Service activity; or.
- Enrollment in any educational activity including high school, high school equivalency training, college, technical or vocational school, or job skills training.

The procedure to follow prior to notification of AG closure is as follows:

Step 1: The Case Manager must conduct a home visit to discuss the 24-month work requirement, explain the consequences of failing to meet this requirement and to gather information described below. An office visit or telephone call cannot be substituted for the home visit.

Step 2: After the home visit, the Case Manager and/or Supervisor must file a written report in the case record and a detailed recording about the circumstances surrounding AG closure. This report must contain, at a minimum, the following information. Any other information deemed appropriate should be included.

- Case name, case number, county of residence, address, telephone number
- Number of parents and number of children in the home
- Number of office visits in the past 12 months

NOTE: The WV WORKS benefit is not stopped and no notice of pending closure is sent for failure to meet the 24-month work requirement without first completing the evaluation procedure outlined below.

NOTE: SNAP and Medicaid eligibility must be evaluated separately, based on the policy of those programs. NOTE: Although the 60-month lifetime limit normally does not apply to a non-recipient Work Eligible parent, if another parent is included in the assistance group (AG), the time limit applies to the adult AG members. The 24-month work requirement may be met by one or both parents, including any non-recipient parent in the household.

- Number of home/work site visits in the past 12 months
- Number of referrals provided to the AG for help in finding their own placement(s) of five hours or more, and date(s) of those referrals
- Number of sanctions that have been or are currently being imposed and information about sanctions still pending
- Whether or not the participant met his work participation requirement in any of the past 12 months, and if so, which months and why the participation ended
- Any special or unusual circumstances in the family
- Case Manager and/or Supervisor decision, including reason, about whether or not the family should continue to be eligible beyond 24 months without meeting the minimum five-hour work requirement.

Step 3: If the decision is to close the WV WORKS AG, the appropriate notice procedures are followed. When the case is closed due to failure to meet the work requirement at the end of the 24-month limit, the parent or caretaker must actually be engaged in work, according to the above definition, prior to approval for the 25th month. See Section 1.5, to determine the beginning date of eligibility when the participant reapplies after losing eligibility because the 24-month work requirement was not met.

## **DISCUSSION**

Governing policy mandates that work participation is an eligibility requirement after receipt of 24 months of WVW benefits. The Respondent determined that the Appellant failed to comply with work requirement obligations of the WVW program and subsequently terminated the Appellant's benefit effective December 31, 2023. The Appellant appealed the Respondent's decision citing that she had excused absences for failing to participate with her activity (Exhibit D-1). The Respondent had to prove by a preponderance of the evidence that the Appellant failed to meet the



minimum average of weekly participation in a work activity to maintain eligibility for the WVW program.

Participants of the WVW program, who have received 24 months of benefits, must be engaged in work. For purposes of meeting the 24-month limit, work is defined as participation in one or more activities for a minimum average of five hours per week. The activities in which WVW participants can be engaged in work to meet the 24-month work requirement include, but are not limited to, the Community Work Experience Program (CWEP).

The Appellant, a recipient of WVW benefits for a total of 30 months, is subject to the 24-month work requirement. The Appellant completed a Personal Responsibility Contract (Exhibit D-15) in which she agreed to participate in a CWEP activity with the [REDACTED] for a total of 128 monthly hours. The Respondent provided testimony indicating that Appellant continually failed to meet the obligations of her PRC for the months of September through December, by failing to meet the work participation agreement of 128 monthly hours. Angeles Watson, Family Support Specialist, testified that the Appellant provided reasoning for her failure to meet her work participation with her CWEP agreement which included illnesses and her stepping on pencil (Exhibit D-10e and Exhibit D-10f). Ms. Watson purported that the Respondent has continually worked with the Appellant to provide resources and eliminate employment barriers which was documented in Respondent's supportive services of car repair (Exhibit D-8) and other transportation assistance (Exhibit D-13).

As documented in case comments (Exhibit D-13), the Appellant's WVW benefits were terminated in September 2023, due to her failure to comply with the 24-month work requirement. The Appellant's WVW benefits were later reinstated because the Appellant was "facing barriers and unable to attend her activity as scheduled". (Exhibit D-13)

The Appellant provided a Participant Time Sheet (Exhibit D-7) for October 2023, which documented 69.5 hours of participation in a work activity with [REDACTED]. Ms. Watson indicated through testimony and case comments (Exhibit D-13) of the difficulties the Respondent had in obtaining the time sheet.

The Appellant provided Participant Time Sheets from [REDACTED] (Exhibit D-14) for November 2023, which documented 144 hours of participation. Ms. Watson disputed the validity of the reported hours citing contradictory information from conversations with the Appellant and the site supervisor from [REDACTED]. Ms. Watson documented in case comments (Exhibit D-13) after a conversation with the site supervisor that "[The Appellant] was just putting in the hours that she was to complete on her scheduled days because she was making up hours on the weekend." Ms. Watson indicated that she had conversations with the site supervisor of the importance of reporting correct information in Participant Time Sheets. However, Ms. Watson indicated that she "complied and paid [transportation reimbursement] for those days" as reported on the November 2023 time sheet (Exhibit D-14).

For December 2023, the Respondent determined that the Appellant failed to participate in her CWEP assignment for the first week of the month and on December 8, 2023 issued a Notice of

Decision (Exhibit D-2) which documents the termination of the Appellant's WVW benefits, effective December 31, 2023, for her failure to comply with the 24-month work requirement.

Kellie Marcum, Family Support Supervisor, provided additional testimony to support the Respondent's decision to terminate the Appellant's WVW benefits. Ms. Marcum testified that the Appellant received benefits in another county and has demonstrated a "pattern of not doing an assignment". Ms. Marcum elaborated that the Appellant must meet the 24-month work requirement of five weekly hours or provide a physician's statement documenting her inability to comply with the minimum work requirements. Ms. Marcum indicated that a home visit was conducted with the Appellant and that without documentation from a physician that the Appellant could not participate in a work activity for the minimum requirements her WVW cash assistance benefits could not be approved.

The Appellant acknowledged that she experienced multiple issues with participation, including tardiness, which were documented in the various emails to the Respondent. (Exhibit D-10 through Exhibit D-10f) The Appellant indicated that her daughter has experienced some health issues which required her attention, but she has made attempts to make up hours.

Policy is clear that to maintain eligibility after 24 months receipt of WVW benefit, any participant of the WVW program must be engaged in work in one or more activities for a minimum of five hours per week (averaged) unless otherwise exempt. Further, policy stipulates that prior to the notification of closure of an assistance group for failing to meet the 24-month work requirement, the case manager must complete a home visit to discuss the 24-month requirement and the consequences for failing to comply (an office visit or telephone call cannot be substituted), the case manager must file a detailed written report in the case record detailing the circumstances of the assistance group closure, and follow the appropriate closure notice procedures.

There is no question that the Appellant is subject to the minimum 5 weekly hours of participation with the WVW program. The Appellant provided documentation of her participation in her assigned activity for October 2023 and November 2023. Although the Respondent questioned the validity of the November 2023 time sheet, the Respondent accepted and provided transportation reimbursement for each day of participation; therefore, the documented hours are considered valid. It is not disputed that the Appellant did not participate in her work activity prior to the issued termination of December 8, 2023, as evidence demonstrates that the Appellant's child was ill on December 1, 2023 and was seen by a physician on December 5, 2023. However, policy is clear that prior to any termination of a WVW benefit due to a non-compliance with the 24-month work requirement, the case manager must complete a home visit to discuss the requirement and consequences of non-compliance and file a detailed written report documenting the circumstances of the closure. While evidence documents a home visit was conducted in September 2023, concerning a separate 24-month noncompliance, there was no evidence submitted to support that a home visit was conducted prior to the issuance of the December 8, 2023 Notice of Decision (Exhibit D-2). Evidence revealed that the Appellant and Respondent completed an in-person good cause meeting on December 14, 2023 (Exhibit D-13 and Exhibit D-16) after the issuance of the Notice of Decision; however, policy specifically notes that an office visit or telephone call cannot substitute the home visit prior to a 24-month non-compliance closure. Additionally, there was no

evidence to support that a detailed report concerning the circumstances of the closure was documented prior to the closure.

Evidence revealed that the Respondent failed to follow the proper procedures prior to the notification of benefit closure of the Appellant's assistance. Therefore, the Respondent's decision to terminate the Appellant's WVW benefits cannot be affirmed.

### **CONCLUSIONS OF LAW**

- 1) After receipt of 24 months of WVW benefits, engagement in work is an eligibility requirement.
- 2) Policy defines work as participation in one or more activities for a minimum of five hours per week.
- 3) Prior to notification of closure of WVW benefit for non-compliance to the 24-month work requirement the case manager must conduct a home visit. An office visit or telephone call cannot be substituted for the home visit.
- 4) Prior to notification of closure of the WVW benefit for non-compliance to the 24-month work requirement the case manager must file a written report in the case record concerning the circumstances surrounding the assistance group closure.
- 5) The Appellant has received 30 months of WVW benefits and is subject to the minimum work requirements of the WVW program.
- 6) The Appellant and Respondent completed an office visit on December 14, 2023, after the issuance of notice of termination of WVW benefit.
- 7) The Respondent failed to follow the appropriate procedures outlined in policy prior the notification of an assistance group closure.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the decision of the Respondent to terminate the Appellant's West Virginia Works benefits due to non-compliance with the 24-month work requirement.

**ENTERED this \_\_\_\_\_ day of January 2024.**

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Eric L. Phillips  
**State Hearing Officer**