



March 27, 2024

[REDACTED]

RE: [REDACTED] v. WV DOHS
ACTION NO.: 24-BOR-1316

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 HUMAN SERVICES. 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: Noelle Moore, WV DoHS, BFA

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

██████████,

Appellant,

v.

ACTION NO.: 24-BOR-1316

**WEST VIRGINIA DEPARTMENT OF
HUMAN SERVICES
BUREAU FOR 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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on March 19, 2024, on an appeal filed February 1, 2024.

The matter before the Hearing Officer arises from the Respondent's January 12, 2024 decision to apply a first-level sanction against the Appellant's WV WORKS/WVEAP benefits resulting in case closure and ineligibility for cash benefits for 1 month.

At the hearing, the Respondent appeared by Noelle Moore, Family Support Specialist. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were her stepfather, ██████████, and her boyfriend, ██████████. The witnesses were placed under oath and the following documents were admitted into evidence:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 WV Works Personal Responsibility Contract (PRC), Self-Sufficiency Plan (Original) Part 2 of 2, signed and dated December 18, 2023
- D-3 Email chain between Jessica Geris and ██████████, December 28, 2023 - January 30, 2024
- D-4 Employer Contact Form (DFA-WVW-25), December 2023
- D-5 Notice of Pending Closure of Benefits (DFA-WVW-5), dated January 11, 2024; blank Pre-Hearing Conference/Fair Hearing Request Form (DFA-FH-1)
- D-6 Notice of WV WORKS/WVEAP termination, dated January 12, 2024
- D-7 Employer Contact Form (DFA-WVW-25), January 2024

- D-8 WV Income Maintenance Manual, Chapter 18, §18.12.5
- D-9 WV Income Maintenance Manual, Chapter 18, §18.8.1.B (excerpt)
- D-10 WV WORKS Legal Support Project Referral Form, Form A – Referral to Legal Service Provider, signed and dated December 6, 2023

Appellant's Exhibits:

- A-1 Employer Contact Form (DFA-WVW-25), January 2024
- A-2 WV Workers' Compensation Employees' and Physicians' Report of Occupational Injury or Disease, date of injury June 7, 2023, unsigned/incomplete
- A-3 Not admitted
- A-4 WV Workers' Compensation Employees' and Physicians' Report of Occupational Injury or Disease, date of injury June 7, 2023, completed, signed and dated July 18, 2023
- A-5 Disability/Incapacity Medical Assessment form, incomplete, signed and dated July 18, 2023
- A-6 Personal prescription information
- A-7 [REDACTED] after visit summary, dated January 28, 2024
- A-8 [REDACTED] Work Status Summary, dated July 18, 2023
- A-9 Individualized Education Program, [REDACTED] Schools, dated April 24, 2008
- A-10 Notice of WV WORKS/WVEAP termination, dated January 12, 2024
- A-11 [REDACTED] Accident/Incident Report Form, dated June 7, 2023

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 December 18, 2023, the Appellant met with her worker, Jessica Geris, and entered into a Personal Responsibility Contract (PRC). (Exhibit D-2)
- 3) As part of the PRC, a Self-Sufficiency Plan (SSP) was developed wherein several goals were to be met including submitting employer contact forms daily and completing 85 [activity] hours monthly. (Exhibit D-2)
- 4) The Appellant failed to submit daily employer contact forms.
- 5) Worker Geris determined a sanction must be placed against the Appellant for failing to attend an assigned activity.

- 6) On January 11, 2024, a Notice of Pending Closure of Benefits was sent to the Appellant, notifying her that an appointment had been scheduled for January 22, 2024. (Exhibit D-5)
- 7) The Appellant failed to show for her January 22, 2024 appointment.
- 8) On January 12, 2024, Notice of the placement of a first sanction and resulting in WV WORKS/WEAP benefit closure effective February 1, 2024, was sent to the Appellant. (Exhibit D-6)
- 9) This is the Appellant's first sanction.

APPLICABLE POLICY

WV IMM, Chapter 18, §18.1.1, *Program Background*, 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 Human Services (DOHS) 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)*, 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 DOHS 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 18, §18.12, *Job Search And Job Readiness Assistance (JR)*, in part: Job Search and Job Readiness Assistance (JR) means the act of seeking or obtaining employment and preparation to seek or obtain employment. Strategic Planning in Occupational Knowledge for Employment and Success (SPOKES) and EXCEL are the primary programs for this work activity. Programs are designed to improve work attitudes and behavior, center on general workplace expectations to help participants prepare for work, and to help participants to successfully compete in the labor market. This activity must be supervised no less frequently than daily. Daily supervision does not necessarily mean daily in person. The Case Manager or other responsible party provides oversight, knows what the participant is supposed to be doing, and is responsible for ensuring that the participant is actually performing these tasks. Contact may be by phone or electronic where available.

WV IMM, Chapter 18, §18.12.5, *Job Search*: Job Search must be a structured and supervised activity which may include the following:

- Making contacts with employers by phone
- Making contacts in person
- Use of the internet to learn of suitable job openings, applying for jobs, and interviewing for jobs

The Employer Contact Form, DFA-WVW-25, may be used to verify time spent on self-directed job search.

WV IMM, Chapter 18, §18.4.2.A.1, Participation Requirement:

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.

NOTE: See Section 18.4.3.A.2 for requirements for parents under age 20. They are not subject to the 85-hour minimum rule.

NOTE: For single parents with a child under age six, the minimum participation requirement of 85 hours per month must be attributable to one or more of the Core Work Activities.

WV IMM, Chapter 18, §18.4.3, Required Monthly Participation Hours: Assistance Groups (AG) must complete federally established monthly hours of approved work activities in order to meet the participation requirement. Required monthly participation hours listed in this section are minimum hours only. The number of required participation hours must be included on the participant's SSP, and in the eligibility

NOTE: For the initial month of benefit receipt, required monthly participation begins the first full week after eligibility has been confirmed. As part of the Stronger Family Job Retention column of the WV Bridge Model, the Case Manager must address challenges to participation before the individual is required to begin participation in an allowable activity. To determine the scheduled hours of participation for the initial month, the remaining business days, Monday through Friday, beginning with the Monday after eligibility is confirmed, are used. Actual hours of participation from the participation time sheet, DFATS-12, are entered as the completed hours.

WV IMM, Chapter 18, §18.4.7, Disability/Incapacity – Definition for Temporary Good Cause, in part: Disability and incapacity for a Work-Eligible Individual may be established with or without a physician's statement as described in the following sections.

WV IMM, Chapter 18, §18.4.7.A, Establishing Disability without a Physician's Statement:

When the disability is obvious to the Case Manager, no verification is required. The Case Manager must record his findings and the reason for his decision in case comments. If the disability is not obvious to the Case Manager, disability may be established according to other criteria below. If disability cannot be established according to this section, see Establishing Disability With A Physician's Statement below.

- The individual receives benefits from a governmental or private source, and these benefits are based on his own illness, injury or disability. This includes, but is not limited to: Workers' Compensation, RSDI, SSI, VA benefits, Black Lung benefits, Medicaid (incapacity, blindness or disability), private insurance, sickness benefits, etc. However, if any of these conditions are questionable, such as a low percentage disability for VA benefits, a physician's statement may still be required. For SSI and RSDI purposes, being

certified for these benefits (approved, but not yet receiving payment withheld to repay, etc.) is the same as receiving them.

- The individual is a veteran with a service-connected or non-service-connected disability, rated or paid as total, under Title 38 of the United States Code.
- The individual is a veteran who is considered by the VA to be in need of regular aid and attendance, or permanently housebound, under Title 38 of the United States Code.
- The individual is a surviving spouse of a veteran and is considered by the VA to be in need of aid and attendance, or permanently housebound, under Title 38 of the United States Code.
- The individual is a surviving child of a veteran and is considered by the VA to be permanently incapable of self-support, under Title 38 of the United States Code.
- The individual has one of the following conditions:
 - Permanent loss of use of both hands, both feet or one hand and one foot.
 - Amputation of leg at hip.
 - Amputation of leg or foot because of diabetes mellitus or peripheral vascular diseases.
 - Total deafness, not correctable by surgery or hearing aid.
 - Statutory blindness, unless due to cataracts or detached retina.
 - IQ of 59 or less, which was established after attaining age 16.
 - Spinal cord or nerve root lesions resulting in paraplegia or quadriplegia
 - Multiple sclerosis in which there is damage of the nervous system because of scattered areas of inflammation which recurs and has progressed to varied interference with the function of the nervous system, including severe muscle weaknesses, paralysis and vision and speech defects.
 - Muscular dystrophy with irreversible wasting of the muscles with a significant effect on the ability to use the arms and/or legs.
 - Impaired renal function due to chronic renal disease, documented by persistent adverse objective findings, resulting in severely reduced function which may require dialysis or kidney treatment.
 - Amputation of a limb, when current age is 55 or older.
- Recipients of federal, state or local government disability retirement, who receive such benefits due to one of the conditions specified above. This includes, but is not limited to, payments under Civil Service Retirement (CSR) and Federal Employee Compensation Act (FECA).
- Those individuals who receive federally- or state-administered supplemental benefits under Section 1616 (a) of the Social Security Act (optional state supplementation to SSI payments) provided that eligibility to receive the benefits is based upon the disability or blindness criteria used under Title XVI of the Social Security Act or under Section 212 (a) or Public Law 93-66. West Virginia has no such program.
- Recipients of annuity payments, under Section 2,(a),(1),(iv) of the Railroad Retirement Act of 1974, who also have been determined eligible to receive Medicare under the Railroad Retirement Act.
- Recipients of an annuity payment, under Section (2),(1),(1),(v) of the Railroad Retirement Act of 1974, who have been determined to be disabled based on the criteria used under Title XVI of the Social Security Act.
- Recipients of benefits from the following Medicaid coverage groups:
 - SSI-Related Medicaid

- Aged and Disabled Waiver (ADW)
- Intellectual/Developmental Disabilities (I/DD) Waiver
- Traumatic Brain Injury (TBI) Waiver

WV IMM, Chapter 18, §18.4.7.B, Establishing Disability with a Physician’s Statement: The following criteria must be met to establish disability when the individual does not qualify according to Establishing Disability Without A Physician’s Statement above.

WV IMM, Chapter 18, §18.4.7.B.1, Definition of Physician’s Statement: The term physician's statement means a medical report from a licensed medical professional, including, but not limited to, Physicians, Surgeons, Doctors of Osteopathy, Chiropractors, licensed or certified Psychologist, and Nurse Practitioners.

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

WV IMM, Chapter 14, §14.8, WV Works Sanctions, 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.

WV IMM, Chapter 14, §14.8.1, Definition Of A Sanction, 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.

...

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

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 first-level sanction results in the termination of WV WORKS benefits for a period of one month.

Because the Appellant's case manager, Jessica Geris, determined that the Appellant failed to comply with her SSP by not submitting daily employer contact forms, a first-level sanction was applied. On January 11, 2024, a Notice of Pending Closure of Benefits (DFA-WVW-5) was sent to the Appellant with a case staffing and good cause appointment scheduled for January 22, 2024. On January 12, 2024, a Notice of WVWORKS/WEAP benefit closure was sent to the Appellant. The Appellant failed to appear for the January 22, 2024 case staffing and good cause appointment. The Appellant's WV WORKS/WVEAP benefits terminated effective February 1, 2024.

The Appellant's witness, [REDACTED], testified that he and his wife receive the Appellant's mail and they did not see the letter regarding the scheduled good cause appointment. He explained that the Appellant has bi-polar issues and is on medications for this. The Appellant testified that she has a learning disability and had told her worker. The Respondent's representative, Noelle Moore, testified that she reviewed the Appellant's case records and did not find any indication that the Appellant had a documented accommodation requirement or any barriers in participating in an activity. It is noted that Worker Geris did provide the Appellant with a referral to Legal Aid for assistance in applying for Supplemental Security Insurance (SSI)/Social Security Disability Insurance (RSDI) on December 6, 2023. The Appellant's witness, [REDACTED], stated that the Appellant had an appointment with Legal Aid on March 22, 2024.

Although the Appellant submitted Employer Contact Forms, it was not done on a daily basis as required by the SSP. Ms. Moore testified that the Appellant did not submit any Employer Contact Forms until January 1, 2024. The Appellant did not dispute the fact that she failed to submit daily Employer Contact Forms.

Whereas the Respondent showed by a preponderance of evidence that the Appellant failed to meet the terms of her SSP, the Respondent's decision to place a first-level sanction against the Appellant is affirmed.

CONCLUSIONS OF LAW

- 1) Because the Appellant failed, without good cause, to adhere to the term of the December 18, 2023 PRC/SSP, the Respondent must impose a sanction.
- 2) Policy requires a one month closure of WV WORKS/WVEAP benefits for first-level sanctions.

- 3) As this is the Appellant's first sanction, the Respondent correctly determined that the Appellant is ineligible for WV WORKS/WVEAP benefits for one month.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to apply a first-level sanction to the Appellant's WV WORKS/WVEAP benefits.

ENTERED this 27th day of March 2024.

Lori Woodward, Certified State Hearing Officer