



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 31, 2006

Dear Mr. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 18, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under the West Virginia Works Program due to imposition of a third-level sanction.

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.

Eligibility for the West Virginia Works Program is based on current policy and regulations. Some of these regulations state that when a member of the benefit group does not comply with the requirements found on his or her Personal Responsibility Contract (PRC), a sanction must be imposed unless it is determined that good cause exists. For a third offense and all subsequent offenses, the sanction consists of ineligibility for cash assistance for three months or until compliance. (West Virginia Income Maintenance Manual Section 13.9)

While the Department correctly imposed first and second-level sanctions to your West Virginia Works case, policy fails to support the imposition of a third-level sanction to your case based solely on failure to attend a second-level sanction good cause appointment.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to apply a third-level sanction to your West Virginia Works case.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Alyce Rose, FSS, DHHR

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

____,

Claimant,

v.

Action Number: 06-BOR-1162

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 31, 2006 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on May 18, 2006 on a timely appeal filed February 16, 2006. The hearing was originally scheduled for March 7, 2006, but was rescheduled at the request of the Claimant.

It should be noted that WV Works benefits have continued pending a hearing decision.

II. PROGRAM PURPOSE:

The program entitled WV Works is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

WV Works was created by Senate Bill 140, Article 9 of the West Virginia Code and the Temporary Assistance to Needy Families Block Grant, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The purpose of WV Works is to provide assistance to needy families with children so they can be cared for in their own home, reduce dependency by promoting job preparation, work and marriage. The goals of WV Works are to achieve more efficient and effective use of public assistance funds, reduce dependence on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

_____, Claimant
_____, fiancé of Claimant
Alyce Rose, FSS, DHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department correctly proposed termination of the Claimant's benefits and services through the WV Works Program based on application of a third-level sanction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 1.25, 13.9 and 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Good cause information/sanction notification
- D-2 Hearing request
- D-3 IG-BR-29
- D-4 Hearing appointment letter
- D-5 West Virginia Income Maintenance Manual Sections 1.25, 13.9 and 24.3
- D-6 Personal Responsibility Contract
- D-7 Case recordings

VII. FINDINGS OF FACT:

- 1) The Claimant signed a Personal Responsibility Contract, hereinafter PRC, on April 19, 2005 (D-6). Responsibilities to which the Claimant agreed include the following:

I understand that if I am a parent age 20 or above, I will have to get a job or be in a job activity, or both. I further understand that if I quit or refuse a job or job activity without good cause, I will be sanctioned.

I understand that I am required to attend any meetings/appointments related to my eligibility for cash assistance and my self-sufficiency goals. These

meetings/appointments include but are limited to: Periodic review of my eligibility for benefits; assessment of my skills and progress in meeting my goals and becoming self-sufficient; employment interviews scheduled by or for me, etc.

- 2) Ms. Rose testified that the Claimant received a first-level sanction when he failed to start his community service job at [REDACTED] on November 1, 2005 and failed to appear at the related good cause appointment on November 14, 2005. A second-level sanction was applied when the Claimant failed to keep an appointment with the Department for activity placement on January 10, 2006 and did not appear for the related good cause appointment on January 18, 2006. Information concerning these sanctions is included in Exhibit D-1.
- 3) On January 27, 2006, Ms. Rose completed a required home visit to the Claimant's residence and sent the Claimant a letter (D-1) which indicated that a third-level sanction was being applied to his case as a result of failure to appear for the second sanction good cause appointment on January 18, 2006. The Claimant failed to attend a third-level sanction good cause appointment on February 9, 2006 and the assistance check was scheduled to be terminated effective March 2006.
- 4) Mr. ____ contested circumstances surrounding the second-level sanction. He testified that he telephoned the DHHR office and attempted to reschedule the activity placement appointment. Evidence indicates, however, that the appointment had originally been scheduled for January 3, 2006 and Ms. ____ telephoned the office on that date.
- 5) Policy found in West Virginia Income Maintenance Manual Section 1.25T (D-5) states that the Personal Responsibility Contract (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the West Virginia Works assistance group 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 benefit group. No sanction may be imposed for failing to adhere to any provision that is not specifically addressed on the PRC at the time the failure occurred.

- 6) West Virginia Income Maintenance Manual Section 13.9 (D-5):

When a member of the benefit group does not comply with the requirements found on his PRC, a sanction must be imposed unless the worker determines that good cause exists.

Unless the client shows good cause for non-compliance, the sanction is imposed.

^{1st} Offense- 1/3 reduction in the check amount for 3 months.

2nd Offense- 2/3 reduction in the check amount for 3 months.

3rd Offense and all subsequent offenses-Ineligibility for cash assistance for 3 months or until compliance, whichever is later.

- 7) West Virginia Income Maintenance Manual Section 13.9 states that once a sanction has been imposed, it cannot be stopped until the appropriate action is taken or the appropriate time has elapsed, whichever is later.
- 8) West Virginia Income Maintenance Manual Section 13.10 sets forth good cause criteria for failure to meet work requirements or adhere to the Personal Responsibility Contract. It states:

If a parent or other caretaker relative included in the payment quits or refuses employment within the 30 day period prior to the date of application or when the client fails or refuses to meet his work requirement and/or adhere to his PRC requirements, the Worker must determine the reason for such failure or refusal.

Failure or refusal to comply, without good cause, results in imposition of a sanction. When the Worker discovers the failure or refusal, a notice of adverse action must be issued.

This section states that all good cause determinations must be recorded in RAPIDS. The recording must include the reason the Worker did or did not impose a sanction.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when a member of the benefit group does not comply with requirements found on his PRC, a sanction must be imposed unless the worker determines that good cause exists. No sanction may be imposed for failing to adhere to any provision that is not specifically addressed on the PRC at the time the failure occurred.
- 2) Evidence reveals that the Department properly applied first and second-level sanctions to the Claimant's case as a result of failure to start community service work on November 1, 2005 and to attend an activity placement appointment on January 10, 2006.

However, evidence does not support the imposition of a third-level sanction to the Claimant's case since the third-level sanction was based solely on the Claimant's failure to attend a good cause appointment **specifically related to his second-level sanction**. The January 18, 2006 good cause appointment would have simply provided the Claimant an opportunity to dispute issues related to his second sanction (failure to appear for activity placement) if he had so desired, and the PRC signed by the Claimant does not specifically address attendance at good cause appointments as an eligibility

requirement. No evidence was provided to indicate that any other type of WV Works-related appointment was scheduled on January 18, 2006.

Policy clearly and repeatedly states that failure to comply with PRC requirements, without good cause, results in imposition of a sanction. This indicates that each individual sanction and its related good cause appointment constitute **one** specific issue.

Furthermore, policy does not address mandatory attendance at good cause appointments.

- 3) The State Hearing Officer finds that imposition of a third-level sanction for failure to attend a good cause appointment related solely to a second-level sanction would essentially penalize the Claimant twice for the same offense. Therefore, the Department's proposal to impose a third-level sanction to the Claimant's case is without merit.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency to impose a third-level sanction to the Claimant's case.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of May 2006.

**Pamela L. Hinzman
State Hearing Officer**