



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

January 19, 2006

Ms. _____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 13, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your West Virginia Works Benefits.

In arriving at a decision, the State Hearings 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 as follows: Being engaged in a work activity becomes an eligibility requirement after the client has been a recipient of benefits for a total of 24 months unless a determination of good cause is made. The months do not have to be consecutive. (West Virginia Income Maintenance Manual Section 15.7 REQUIREMENT FOR BEING ENGAGED IN WORK (WV WORKS)).

The information submitted at your hearing revealed: You failed to comply with the terms of your Personal Responsibility Contract.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department in this particular matter.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Fred Burns, Family Support Specialist

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

_____,
Claimant,

v.

Action Number: 05-BOR-7000

**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 January 19, 2006 for Ms. _____. 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 originally scheduled for December 8, 2005 on a timely appeal filed November 28, 2005 (**D-10**). Ms. _____ was required to attend mediation with the _____ County Circuit Court on December 8, 2005 (**C-2**). The fair hearing was rescheduled and finally convened on January 13, 2006 (**D-9**).

It should be noted here that the claimant's WV WORKS Benefits have been continued pending the outcome of the fair hearing. A pre-hearing conference was held between the parties prior to the fair hearing and; Ms. _____ did not have an attorney working with her in this particular matter.

II. PROGRAM PURPOSE:

The Program entitled West Virginia 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
Fred Burns, Family Support Specialist – _____ District DHHR

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Did Ms. _____ comply with the requirements of her Personal Responsibility Contract?

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 1.25 T PERSONAL RESPONSIBILITY CONTRACT (PRC); 13.8 (B) Determining WV WORKS Temporary Exemptions; 15.7 REQUIREMENT FOR BEING ENGAGED IN WORK (WV WORKS) and; 24.3 D (2) (a) Definition of Physician's Statement.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Closure letter dated 11/14/05
- D-2 PRC Specific Assignment/Activity Requirements dated 08/31/05
- D-3 Fax from Athletic & Physical Therapy Services, Inc. dated 11/22/05
- D-4 DFA-RT-8a Physician's Statement
- D-5 WVIMM Chapter 24.3 (2) (a) Definition of Physician's Statement
- D-6 WVIMM Chapter 15.7 Requirement for being engaged in WORK (WV WORKS)
- D-7 WVIMM Chapter 13.8 (B) Determining WV WORKS Temporary Exemptions
- D-8 Summary Statement
- D-9 Scheduling Notice dated 12/06/05 (Rescheduled)
- D-10 Scheduling Notice dated 11/28/05 (Initial)
- D-11 Request for Hearing dated 11/21/05
- D-12 GroupWise messages re: Scheduling

Claimants' Exhibits:

- C-1 Medical Statements dated 01/06/06 & 01/12/06
- C-2 Mediation Order from _____ County Circuit Court for 12/08/05

VII. FINDINGS OF FACT:

- 1) Ms. _____ completed a WV WORKS application on August 31, 2005 and reported expecting another child in January 2006. At the time of the application, she had received forty-eight (48) months of cash assistance. After a _____ recipient has received cash assistance

for twenty-four (24) months or more, they are required to participate in an approved work/educational activity for at least twenty (20) hours per week (D-6). Ms. _____ agreed to attend GED classes 20 hours per week according to her Personal Responsibility Contract (D-2).

2) In October 2005, Mr. Burns was informed that Ms. _____ was not attending the required educational activity. He contacted Ms. _____ and was told that she was having complications with her pregnancy.

3) On November 10, 2005, Ms. _____ came to the _____ DHHR Office and reported complications with her pregnancy. She did not have any medical statements to support her claim. Mr. Fred Burns gave her a form, DFA-RT-8a Physician's Statement (D-4), to have her physician complete and return. When the document was received in the _____ DHHR Office, a determination would be made regarding Ms. _____'s ability to participate in assigned activities (D-7). Ms. _____ never returned the form.

4) Mr. Burns sent a Closure Letter to Ms. _____ on November 14, 2005 (D-1). It stated in part, "ACTION: Your WV WORKS will stop. You will not receive this benefit after November 2005. REASON: No one is eligible for WV WORKS. Received benefits for 24 months without being exempt from or involved in a work activity."

5) Ms. _____ requested a fair hearing with continued benefits on November 21, 2005 (D-11).

6) Ms. _____ had her mother fax a statement from her Physical Therapist, _____ (D-3), dated November 22, 2005. It stated in part, "She should limit her activity." Mr. Burns advised Ms. _____ the statement was not acceptable since Physical Therapists are not Certified Physicians according to West Virginia Income Maintenance Manual Chapter 24.3 (2) (a) Definition of Physician's Statement (D-5).

7) On January 6, 2006, Ms. _____ submitted a statement from _____ (C-1) stating, "_____ is disabled since 10/20/05 with sciatica (low back, leg pain) and is unable to work until at least 6 weeks after cesarean." Mr. Burns would not accept the statement since it was not received in a timely manner.

8) Ms. _____ submitted another statement from _____ at the hearing dated January 12, 2006 (C-1). It stated, "_____ has been disabled with back pain, syncope and pregnancy. Expected return to work at full function is estimated to be March 15, 2006." Again, Mr. Burns would not accept the statement since it was not received in a timely manner. According to Ms. _____, she could not obtain the medical statements any earlier because she was referred to specialists.

9) **West Virginia Income Maintenance Manual 1.25 T PERSONAL RESPONSIBILITY CONTRACT (PRC)** states in part,

The Personal Responsibility Contract (PRC), form OFA-PRC-1, is a negotiated contract between the adult or emancipated minor members of the WV WORKS AG and the Worker, as the representative of the Department.

There are 2 parts to the form and each serves a different purpose. Refusal or other failure, without good cause, to sign either part of the form results in ineligibility for the entire AG.

Completion and signature of both parts of the form are required prior to approving the WV WORKS AG. However, when the client reapplies for benefits within 3 months of the last day of the effective month of closure, no new PRC is required. Instead, the client must sign the existing PRC again and put the date of his signature.

EXAMPLE: An AG is closed on April 10th. The last day of the effective month of closure is April 30th. If he reapplies on or before July 31st, no new PRC is required.

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. 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.

The initial PRC must be completed on a paper form, since the WP sub-system is unavailable until the AG has been approved in RAPIDS and completion of a PRC is required prior to AG approval. Once approved, current PRC information must be maintained in RAPIDS. When changes are made to the PRC on a paper form, such as during a home or work site visit, the RAPIDS information must then be updated as soon as possible.

Each part of the form is discussed separately below.

NOTE: A separate PRC is completed for each adult and emancipated minor in a WV WORKS AG.

1. PRC - Part 1

Part 1 of the PRC is the same for all clients. It states the purpose of the WV WORKS Program and lists the client's rights and responsibilities. Each adult and emancipated minor AG member must sign Part 1 of his own PRC. In addition, the Worker must sign the form as the Department's representative. The client's signature indicates that he understands and accepts the responsibility inherent in the Program. The Worker's signature indicates that he has explained the client's rights and responsibilities and the Department's responsibilities to the client. It also indicates that the Worker has addressed all of the client's questions and concerns before requesting him to sign it.

Some of the items listed on the PRC duplicate information on the OFS-2. However, the signature on the OFS-2 does not substitute for the signature on the PRC and vice versa.

2. PRC - Part 2

Part 2 of the PRC is specific to each individual and is the Self-Sufficiency Plan. 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, Part 2 identifies the circumstances which impede attainment of the established goals and specifies the services needed to overcome the impediments. The services listed on the

form may be Support Service Payments or any other type of service provided to the client or to which he has been referred. When there are no support services available at the time to appropriately address the barrier, the Worker must note this on the form and periodically review the availability of needed services.

The client must initial each change to the Self-Sufficiency Plan when it is made on a paper form. His initials indicate his agreement to the revisions.

The Self-Sufficiency Plan is a negotiated contract between the Department and the client. Even though it must be completed prior to approval of the case, it is a working document and revisions are made when either the client or the Worker believes it necessary. Frequent changes are expected as the client progresses toward his goal.

10) West Virginia Income Maintenance Manual Section 13.8 B Determining WV WORKS Temporary Exemptions:

Individuals with a physical or mental health incapacity, or suffering from a temporary debilitating injury are temporarily exempt. The temporary injury must last, or be expected to last, for more than 30 days. The individual's condition must be reevaluated within the time limits specified by his medical practitioner, but no less often than annually. MRT must approve all individuals claiming permanent and total disability. See Section 12.3, C for instructions to determine incapacity. In addition, all adults and emancipated minors who are temporarily exempt due to physical, mental or emotional reasons must be submitted to MRT prior to receipt of their 24th WV WORKS payment. Referral may be made at any time prior to the 24th month. However, approval of an application may not be delayed pending receipt of the MRT decision unless the Worker and/or Supervisor cannot determine that incapacity exists from available medical information. When submitting the individual's information to MRT, the Worker must request that a decision be made about disability, as well as incapacity.

11) West Virginia Income Maintenance Manual Section 15.7 REQUIREMENT FOR BEING ENGAGED IN WORK (WV WORKS) states in part,

Starting with the first day for which benefits are received, a parent or other caretaker relative who is included in the WV WORKS AG is subject to a work requirement, unless temporarily exempt. See Chapter 13 for the temporary exemptions.

Receipt of any of the benefits listed in Section 15.6 counts as a month of benefits. No month of receipt is exempt from being counted, including months in which the client is temporarily exempt from the work requirement. The 24-month period is the first 24 months of the 60-month lifetime limit described in Section 15.6. To continue to be eligible, the client is required to be engaged in work no later than the beginning of the 25th month of benefit receipt.

Being engaged in a work activity becomes an eligibility requirement after the client has been a recipient of benefits for a total of 24 months unless a determination of good cause is made. The months do not have to be consecutive.

12) West Virginia Income Maintenance Manual Section 24.3 D (2) (a) 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, Nurse Practitioners, etc.

VIII. CONCLUSIONS OF LAW:

1) The Personal Responsibility Contract (PRC), form OFA-PRC-1, is a negotiated contract between the adult or emancipated minor members of the WV WORKS AG and the Worker, as the representative of the Department.

Being engaged in a work activity becomes an eligibility requirement after the client has been a recipient of benefits for a total of 24 months unless a determination of good cause is made. The months do not have to be consecutive.

Ms. _____ received WV WORKS Benefits for 48 months at the time of her application dated August 31, 2005. She was required to attend GED classes for at least 20 hours per week according to her signed Personal Responsibility Contract. Ms. _____ failed to comply with the work requirements.

2) 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, Nurse Practitioners, etc.

The Statement Ms. _____ provided from her physical therapist on November 22, 2005, does not meet the requirements of a 'physician's statement.' Ms. _____ failed to provide medical statements in a timely manner. The statements provided in January 2006 were after the closure letter dated November 14, 2005.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the PROPOSAL of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of January 2006.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**