



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

June 22, 2007

Dear Mr. and Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 14, 2007. Your hearing request was based on the Department of Health and Human Resources' action to decrease your West Virginia Works benefits based on the application of a second-level program 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. 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. (West Virginia Income Maintenance Manual Section 13.9)

Information submitted at your hearing reveals that you failed to comply with the requirements of your PRC. Because you were unable to establish good cause for non-compliance, the Agency has correctly applied a second-level sanction to your case.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to apply a second sanction to your West Virginia Works benefits.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Mary Swayze, FSS, DHHR

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

_____,
Claimant,

v.

Action Number: 07-BOR-1430

**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 June 22, 2007 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 June 14, 2007 on a timely appeal filed April 24, 2007 and received by the Hearing Officer on May 22, 2007.

It should be noted that West Virginia Works benefits have not continued pending a hearing decision.

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.

West Virginia 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

_____, Claimant

Joyce Underwood, Family Support Supervisor, DHHR

Mary Swayze, Family Support Specialist, 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 was correct in its action to reduce the Claimant's benefits through the West Virginia Works Program based on application of a second-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-A West Virginia Income Maintenance Manual Section 24.3

D-B Notification and appointment letters

D-C Notice of Decision dated June 7, 2007

D-D Hearing requests and correspondence

D-E Case comments

D-F Support services information

D-G Page of Personal Responsibility Contract

VII. FINDINGS OF FACT:

- 1) As a recipient of West Virginia Works benefits, Mr. _____ updated his Personal Responsibility Contract (D-G) on March 12, 2007. On the contract, Mr. _____ placed his initials and the date next to several assignments/activities he agreed to complete. These assignments included- but were not limited to- turning in time sheets, completing job search (30 contacts per week) and attending TABE testing on April 9, 2007.
- 2) The Family Support Specialist testified that Mr. _____ failed to attend TABE testing as scheduled, so she opted to apply a second sanction to the West Virginia Works benefits. The Family Support Specialist testified that she scheduled a good cause

appointment for April 12, 2007 as stipulated in a letter dated March 30, 2007 (D-B) advising the _____s of the second sanction. The Family Support Specialist indicated that the Claimants failed to attend the meeting (however, case comments in Exhibit D-E indicate that Mr. _____ was in the DHHR office on April 11, 2007 for a good cause appointment regarding the TABE testing and good cause was not granted). The second sanction was applied, resulting in a two-third decrease in the Claimants' West Virginia Works check. The Family Support Specialist testified that she had issued the _____s a gas voucher on March 29, 2007 (as listed in Exhibit D-F) to assist with the cost of transportation to the TABE testing site at _____County Library.

- 3) Mr. _____ testified regarding transportation and communication problems he encountered while residing in _____County. He testified that his vehicle was inoperative and he had borrowed his mother's car, which broke down on two occasions. The _____s testified that they did not know anyone in _____County and that they resided about four miles from the TABE testing site. They testified that they had attempted to call the Family Support Specialist and inform her of their transportation issues, but their messages were not returned. The Family Support Specialist testified that she does not recall receiving messages from the _____s in regard to the TABE testing. Mr. _____ also testified that he has a cellular telephone, but did not receive adequate cellular service while residing in _____County. The _____s moved to _____County in late April 2007. The Claimants' attorney stated that his clients are committed to full cooperation with the Department in the future and requested that the second sanction be waived due to their dire financial situation.
- 4) Policy found in Chapter 1.25, T of the West Virginia Income Maintenance Manual states that the Personal Responsibility Contract form (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 contained in Part 1 of the PRC results in imposition of a sanction against the benefit group. Refusal or other failure, without good cause, to adhere to the self-sufficiency plan (Part 2 of the PRC) results in imposition of a sanction against the benefit group.
- 5) West Virginia Income Maintenance Manual Section 13.9:

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.

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 (D) 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. The client has good cause for failure to participate when:

- The parent or included non-parent caretaker quits employment or fails to participate in his assigned activity due to enrollment and full-time attendance in school, training or an institution of higher learning. College is defined as a 2- or 4-year undergraduate degree program.
- A single parent can prove that child care is unavailable for his child, age 6 or under.
- He is required to appear in court or for jury duty.
- He is experiencing a family crisis such as death or the life-threatening illness of a spouse, parent, child or stepchild, or domestic violence and/or the need to protect abused children makes participation impossible, dangerous or embarrassing and the client accepts a referral for assistance.
- The minimum suitability standards for the specific activity are not met.
- Based on knowledge of the client and his life circumstances, the worker determines that the client has not met the requirement, but has complied to the best of his ability, understanding of the requirement, understanding of the sanction process and/or level of motivation. The Worker has considerable discretion in imposing a sanction. The Worker may determine that the requirement was inappropriate based upon additional assessment. In addition, the Worker may determine that not applying a sanction in a particular situation provides more motivation for future participation than the imposition of a sanction. However, once a sanction has been imposed, it cannot be stopped, until the appropriate time has elapsed, or the appropriate action is taken.
- A requirement of Social Services precludes participation for a specified period of time.
- He refuses to accept surgery which would eliminate or significantly improve his condition, even if the refusal precludes participation.
- He would be required to travel more than one hour each way to participate.

VIII. CONCLUSIONS OF LAW:

- 1) Policy stipulates that when a member of a West Virginia Works Assistance Group does not comply with requirements found on his or her Personal Responsibility Contract, a sanction must be imposed unless the worker determines that good cause exists. For a second-level sanction, the Department imposes a two-third reduction in the West Virginia Works benefits for three months.
- 2) The Claimants indicated that they had inadequate transportation while residing in ██████████ County, which resulted in Mr. ██████████'s inability to attend TABE testing as stipulated on his Personal Responsibility Contract. The Family Support Specialist, however, had issued a gas voucher to the Claimants to cover the cost of transportation to the test site which testimony revealed was about four miles from the Claimants' residence. In addition, policy does not cite lack of transportation as a reason for which good cause can be granted for failure to comply with West Virginia Works requirements.
- 3) Whereas the Claimants were unable to establish good cause for failure to adhere to assignments listed on the Personal Responsibility Contract, the Agency has correctly applied a second-level sanction to their West Virginia Works benefits.

IX. DECISION:

Based on information presented during the hearing and applicable policy, it is the decision of the State Hearing Officer to **uphold** the action of the Agency to apply a second-level sanction to the Claimants' West Virginia Works benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of June, 2007.

Pamela L. Hinzman

State Hearing Officer