



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

September 24, 2007

Dear Ms. _____

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 19, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal 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)

Testimony reveals that you failed to complete three learning/emotional health-based tests as stipulated in your Personal Responsibility Contract. The Department conceded that your completion of one test could have been delayed as you are currently exempt from work activities. The completion of the other two tests is not required by policy.

It is the decision of the State Hearing Officer to **reverse** 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
Rebecca Stephens, FSS, DHHR

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

_____,
Claimant,

v.

Action Number: 07-BOR-1779

**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 September 24, 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 September 19, 2007 on a timely appeal filed July 20, 2007.

It should be noted that West Virginia Works benefits have 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
Rebecca Stephens, 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 proposal to reduce the Claimant's benefits through the West Virginia Works Program based on the application of a second-level sanction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 1.25, 13.9, 13.10 and 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Personal Responsibility Contract dated June 7, 2007
- D-2 Case comments, sanction request information and Notices of Decision
- D-3 Fair hearing information
- D-4 West Virginia Income Maintenance Manual Sections 1.25, 13.9 and 24.4

VII. FINDINGS OF FACT:

- 1) The Claimant applied for West Virginia Works and signed a Personal Responsibility Contract (D-1) on June 7, 2007. As part of the contract, she agreed to complete the TABE, Emotional Health Inventory Screening and Learning Needs Screening tests on June 19, 2007 at the ██████████ County DHHR Office. The Family Support Specialist conceded that the Claimant could have delayed TABE testing as she has a newborn child and is currently exempt from work activities. However, she testified that the Emotional Health Inventory and Learning Needs Screenings are mandatory.
- 2) The Claimant failed to appear for the tests and the Family Support Specialist entered a first sanction on the case after the Claimant did not attend a good cause appointment.
- 3) The worker scheduled the Claimant for the same testing on July 17, 2007 at 9 a.m. The Family Support Specialist testified that the Claimant telephoned the DHHR on July 16, 2007 to confirm the time of the test. The Claimant called the DHHR at 9:50 a.m. July 17, 2007 to inform the worker she had overslept.

- 4) The worker entered a second sanction, sent a Notice of Decision (D-2) on July 18, 2007, and scheduled a good cause appointment for July 26, 2007. The Claimant, however, filed a fair hearing request on July 20, 2007 (D-3) in regard to the second program sanction.
- 5) The Claimant did not dispute the Family Support Specialist's testimony. She testified, however, that she believed she would receive warnings prior to the imposition of sanctions on her case.
- 6) Policy found in Chapter 1.25, T (D-4) 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.

7) West Virginia Income Maintenance Manual Section 13.9 (D-4):

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.

- 8) West Virginia Income Maintenance Manual Section 13.9 (D) (D-4) 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.
- 9) West Virginia Income Maintenance Manual Section 24.4, C, 1 (D-4) states that completion of the Learning Needs Screening by the client is voluntary. The section goes on to indicate that refusal to sign the DFA-WVW-40 waiver form in regard to non-completion of the test does not result in the imposition of a sanction.
- 10) West Virginia Income Maintenance Manual Section 24.4, C, 4 (D-4) states that completion of the Emotional Health Inventory Screening is voluntary and that a client may be asked to sign a waiver if he/she declines to participate in the test. Refusal to sign the waiver does not result in the imposition of a sanction.

VIII. CONCLUSIONS OF LAW:

- 1) Policy stipulates that when a member of a West Virginia Works Assistance Group fails to 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) While the Claimant agreed to attend Learning Needs, TABE and Emotional Health Inventory testing on her PRC and did not provide good cause for failure to attend, the Department conceded that TABE testing could have been delayed as the Claimant is work exempt due to the age of her child. Policy stipulates that completion of both the Learning Needs and Emotional Health Inventory Screenings is voluntary and a client cannot be sanctioned for declining to undergo the testing. No testimony was offered to suggest that the Claimant was advised of the voluntary nature of the tests prior to her completion of the PRC. Because the two tests in question are voluntary, the imposition of a sanction is unwarranted as the activity is not mandated by policy.

IX. DECISION:

Based on information presented during the hearing and applicable policy, it is the decision of the State Hearing Officer to **reverse** the Agency's proposal to apply a second-level sanction to the Claimant's 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 24th Day of September, 2007.

**Pamela L. Hinzman
State Hearing Officer**