



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 2590  
Fairmont, WV 26555-2590

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

November 5, 2007

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 2, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your West Virginia Works benefits (cash assistance) based on the application of a first (1<sup>st</sup>) 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 first offense, the sanction consists of 1/3 reduction in the check amount for 3 months. 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 § 13.9)

The information submitted at your hearing demonstrates that you failed to comply with the requirements on your PRC.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department in applying a first level sanction in your WV WORKS case. This sanction will begin effective December 1, 2007.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Angie Diaz, FSS, DHHR

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 07-BOR-1976**

**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 November 5, 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 hearing convened on November 2, 2007 on a timely appeal filed August 21, 2007.

It should be noted that the WV WORKS benefits have continued at the pre-sanction amount pending the result of the hearing.

**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  
\_\_\_\_\_, Claimant's Mother  
Angie Diaz, FSS, DHHR

Presiding at the Hearing was Thomas E. Arnett, 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 and services through the WV WORKS Program based on the imposition of a 1<sup>st</sup> sanction.

### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual, Chapter 1.25, 13.9 & 13.10

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

Exhibit A WVIMM, Chapter 13.9  
Exhibit B Personal Responsibility Contract (PRC, Part 2) dated February 26, 2007  
Exhibit C Appointment letter (NAGI to completed Medical Review Team application  
Exhibit D Ms.\_\_\_\_\_ 's Doctor's statement dated March 17, 2007  
Exhibit E WVMII, Chapter 13.10D  
Exhibit F Notice of Decision - Sanction Notice EDC1 dated August 13, 2007  
Exhibit G Appointment letter (NAGI) to complete Medical Review Team Application  
Exhibit H Appointment letter (NARO) to complete Case Level Review  
Exhibit I Case Comments dated August 21, 2007 from Good Cause Appointment  
Exhibit J Fair Hearing Request filed on August 21, 2007

### **VII. FINDINGS OF FACT:**

- 1) On February 26, 2007, the Claimant signed her Personal Responsibility Contract, hereinafter PRC, agreeing to "Comply with requests from DHHR & BCSE" (See Exhibit B).
- 2) The Department submitted evidence to indicate the Claimant was notified of three (3) different appointments in the ██████████ County Department of Health and Human Resources - June 5, 2007 at 9:00 a.m. (Exhibit G), August 7, 2007 at 9:00 a.m. (Exhibit H) and August 10, 2007 at 11:00 a.m. (Exhibit C). Exhibits G & C are appointment notices scheduled to address the Claimant's disability and Exhibit H advised the Claimant of a case review for continued eligibility.

- 3) The Department presented testimony to indicate that the Claimant failed to appear for all three scheduled appointments (Exhibits G,C and H) and was subsequently notified in Exhibit F that a first sanction was being applied to her case for failure to comply with the requirements of her PRC.
- 4) A Good Cause appointment was conducted with the Claimant on August 21, 2007 (see Case Comments, Exhibit I). According to the Worker's documentation, the Claimant reported that she did not feel well on the dates when she was scheduled for an appointment. When asked why she did not call the Department to reschedule, the Claimant again indicated that she did not feel well. The Worker also documented that the Claimant's review for continued eligibility was completed during the course of the Good Cause appointment.
- 5) The Department's representative stated that because the Claimant's physician indicated the Claimant's disability would last one (1) year (see Exhibit D), the Claimant is required to be evaluated by the Department's Medical Review Team (MRT). The Department stipulated that continued eligibility was reviewed during the Good Cause appointment on August 21, 2007 and therefore her case review (originally scheduled in Exhibit H) was no longer an issue. However, the Department is pursuing the first level sanction due to the Claimant's failure to appear at the disability evaluation appointments cited in Exhibits G and C.
- 6) The Claimant testified that she did not attend the scheduled appointments because she did not feel well. She also indicated that is "probably slipped my mind because there are so many other things going on." The Claimant acknowledged that she has access to a phone but did not call her Worker and notify her that she would be unable to attend the scheduled appointments.
- 7) The Claimant's mother purported that her daughter has several mental health diagnoses – ODC, she is depressed, she has bi-polar, and she forgets so much. She indicated that she must often remind her daughter of commitments. It should be noted that the only diagnosis listed on Exhibit D is – Mood Disorder NOS.
- 8) West Virginia Income Maintenance Manual ' 13.10.D PHYSICAL / MENTAL INCAPACITY states - An individual is experiencing a physical or mental health condition or he is suffering from a temporary debilitating injury for which a reasonable accommodation cannot be made. The individual's condition must be reevaluated within the time limits specified by his medical practitioner or at least quarterly. For any period of disability or incapacity that is expected to last longer than 6 months, the case must be submitted to MRT for evaluation. MRT must also approve all individuals claiming permanent and total disability.
- 9) Policy found in Chapter 1.25, T, of the West Virginia Income Maintenance Manual provides that the PRC form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the WV WORKS AG (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.

- 10) West Virginia Income Maintenance Manual ' 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.  
1<sup>st</sup> Offense- 1/3 reduction in the check amount for 3 months.  
2<sup>nd</sup> Offense- 2/3 reduction in the check amount for 3 months.  
3<sup>rd</sup> Offense and all subsequent offenses - Ineligibility for cash assistance for 3 months or until compliance, whichever is later.
- 11) West Virginia Income Maintenance Manual ' 13.10 states that the worker must determine whether or not the client is meeting the requirements, attempting to comply to the best of his ability, understands the requirements, and the sanction process. The Worker has considerable discretion in imposing a sanction.
- 12) West Virginia Income Maintenance Manual ' 13.9 states - The sanction period begins the month after expiration of the advance notice period. A sanction is not imposed by having the client repay all or part of the benefit he has already received. A reduced benefit amount for 3 months or termination of cash assistance for at least 3 months is the only means by which a sanction is imposed. Imposition of a sanction may be delayed by a Fair Hearing request. When the Department is upheld, the sanction begins in the month following the Fair Hearing decision.

#### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy states that failure, without good cause, to adhere to the responsibilities contained in Part 1 or Part 2 of the PRC results in imposition of a sanction against the benefit group. A sanction must be imposed unless the worker determines that good cause exists.
- 2) The evidence reveals that the Claimant failed to appear for three (3) scheduled appointments. While there is evidence to indicate that the Claimant's mental health may have been a contributing factor for her failure to appear or reschedule the scheduled appointments, this determination cannot be made without a physician's excuse for each absence. The Department cannot effectively provide case management services through the WV WORKS Program if a recipient fails to assume responsibility for their actions. However, the Notice of Decision issued by the Department on August 13, 2007 incorrectly advises the Claimant her benefits will stop when it should have advised that a first level sanction results in a 1/3 reduction in WV WORKS benefits for a period of 90 days. Based on the evidence, a 1/3 sanction in the Claimant's WV WORKS case is appropriate and will be imposed effective December 1, 2007.

#### **IX. DECISION:**

After reviewing the information presented during the hearing, and the applicable policy and regulations, I am ruling to **uphold** the Agency's proposal to apply a first level sanction to your WV WORKS benefits. The first level sanction will be imposed effective December 1, 2007.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 5<sup>th</sup> Day of November, 2007.**

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**Thomas E. Arnett  
State Hearing Officer**