



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

December 7, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 28, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under the West Virginia Works Program based on the application of a second 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 fails to 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 second offense, the sanction consists of a 2/3 reduction in the amount of the assistance check for three months. No sanction may be imposed for failing to adhere to any provision that was not specifically addressed on the PRC at the time the failure occurred. The Hearing Officer must render a decision based solely on evidence provided during the hearing. (West Virginia Income Maintenance Manual Sections 1.25 and 13.9, WVDHHR Common Chapters Section 780, D)

Information submitted at your hearing fails to demonstrate that you were non-compliant with a requirement that was specifically listed on your Personal Responsibility Contract.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to apply a second 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
Delores Poling, FSS, DHHR

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

_____,

Claimant,

v.

Action Number: 07-BOR-2030

**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 December 7, 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 November 28, 2007 on a timely appeal filed August 27, 2007

It should be noted that the Claimant is receiving continued benefits 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.

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
Delores Poling, 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 and services through the West Virginia Works Program based on the application of a second sanction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 1.25 and 13.9
West Virginia DHHR Common Chapters Manual Section 780, D

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Participant Time Sheet for July 2007
- D-2 Notice of Decision dated August 17, 2007
- D-3 West Virginia Works Personal Responsibility Contracts signed October 8, 2004 and September 15, 2005

VII. FINDINGS OF FACT:

- 1) The Family Support Specialist (FSS) testified that the Claimant was required to continue her vocational training activity at [REDACTED] for 30 hours per week as a requirement of her West Virginia Works Personal Responsibility Contract (PRC). She testified that the continued school attendance agreement had been reached in March 2007 and the agreement was updated on June 22, 2007 during a home visit. The FSS provided a copy of the Claimant's July 2007 Participant Time Sheet (D-1) on which the Claimant's average attendance was 23 hours per week.
- 2) The worker applied a second program sanction and sent the Claimant a Notice of Decision on August 17, 2007 which states:

ACTION: Your WV WORKS will decrease from \$340 to \$114 effective 09/01/07.

REASON: A second sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC).

- 3) The Claimant testified that she had gone on vacation with her children in July 2007 as the [REDACTED] had given her approved time off from classes. She stated that she would not have taken the children away on summer break if she had known it would cause a problem. The Family Support Specialist stated that the Claimant is not permitted similar time away from her work activity.
- 4) The FSS provided a copy of the Claimant's PRC signed on October 8, 2004 (D-3) which indicates the Claimant's goal is to become a beautician/nail technician. Specific assignments/activities listed on the PRC include volunteer activities and job readiness classes, job search and Bureau of Employment Programs registration. A PRC dated September 15, 2005 (D-3) indicates the Claimant's goal is to attend beauty school and lists specific assignments/activities as volunteering at [REDACTED] volunteering at an unspecified location for 30 hours per week, attending Spokes class, going to school at the beauty academy starting October 4, 2006, and continuing with school in 2007.
- 5) Policy found in West Virginia Income Maintenance Manual Section 1.25, T, provides that the PRC form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the WV 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.

- 6) West Virginia Income Maintenance Manual Section 1.25, T:

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.

- 7) 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.

8) WVDHHR Common Chapters Manual Section 780, D states:

The State Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when a member of the West Virginia Works benefit group fails to comply with the requirements found on his or her Personal Responsibility Contract, a sanction must be imposed unless the worker determines that good cause exists. The penalty for a second offense is a 2/3 reduction in the assistance check amount for three months. No sanction can be imposed for failing to adhere to a provision which is not specifically addressed on the Personal Responsibility Contract. Furthermore, WVDHHR Common Chapters Manual dictates that the State Hearing Officer must base a decision solely on evidence provided during the hearing.
- 2) The Claimant did not dispute her incompleteness of work hours in July 2007, but testified that she had believed the time off was acceptable since the beauty school had granted her approved leave. However, no evidence was provided by the Department to verify that the 30-hour requirement was specifically identified on a Personal Responsibility Contract. The contracts provided were from 2004/2005 prior to the Claimant's start date at the beauty academy. Assignments listed on these contracts concerned volunteer activities, and attendance at Spokes and job readiness classes. Therefore, the Hearing Officer cannot determine that a sanction for failure to attend beauty school classes for 30 hours per week was appropriately applied.

IX. DECISION:

The Department's proposal to apply a second sanction to the Claimant's West Virginia Works case is **reversed** due to insufficient evidence of non-compliance with a Personal Responsibility Contract.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of December 2007.

**Pamela L. Hinzman
State Hearing Officer**